House of Lords
House of Commons

Joint Committee on Statutory Instruments

Fifty-eighth Report of Session 2017–19

Drawing special attention to:

Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 **(S.I. 2019/518)**

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Regulations 2019 **(S.I. 2019/644)**

Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/652)**

Network and Information Systems (Amendment etc.) (EU Exit) Regulations 2019 **(S.I. 2019/653)**

North Devon District Council Harbour Authority (Removal of Pilotage Functions) Order 2019 **(S.I. 2019/790)**

Syria (Sanctions) (EU Exit) Regulations 2019 **(S.I. 2019/792)**

Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 **(S.I. 2019/809)**

Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/820)**

Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 **(S.I. 2019/825)**

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Joint Committee on Statutory Instruments

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Lord Lexden (*Conservative*)

Baroness Meacher (*Crossbench*)

Lord Morris of Handsworth (*Labour*)

Lord Rowe-Beddoe (*Crossbench*)

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

ii that its parent legislation says that it cannot be challenged in the courts;

iii that it appears to have retrospective effect without the express authority of the parent legislation;

iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;

vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;

vii that its form or meaning needs to be explained;

viii that its drafting appears to be defective;

ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Jeanne Delebarre (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

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Instruments reported

At its meeting on 8 May 2019 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to nine of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda, are published as appendices to this report.

1 S.I. 2019/518: Reported for requiring elucidation and for defective drafting

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

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect and are defectively drafted in two respects.**

1.2 This instrument prospectively amends retained EU law relating to railways to correct deficiencies arising from Brexit. Regulations 49 to 58 amend Commission Implementing Regulation (EU) 2015/909, which sets out how to calculate costs directly incurred as a result of operating a train service for the purpose of setting charges for the use of railway infrastructure. Article 7 of this EU Regulation allows for a simplified calculation in some circumstances, but only below a specified cost limit that is expressed in Euros. The Committee asked the Department for Transport to explain why this instrument does not convert that amount to Sterling, in the same way as other EU Exit instruments have done. In a memorandum printed at Appendix 1, the Department explains that this is done to prevent divergence between the UK and EU cost limits and thereby avoid the risk of different rules applying on the UK and EU sides of the same cross-border train service. The Committee accepts the explanation and **accordingly reports the Regulations for elucidation, provided in the Department's memorandum.**

1.3 The Committee also noticed that two references in the Regulations appear to be incorrect. In regulation 68(a)(i), there is a seemingly pointless duplication of sub-paragraphs in the reference to "regulation 23(4) to (10), (9) and (10)"; and regulation 82 refers to a non-existent provision of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016. The Committee asked the Department to confirm that these references are incorrect. In its memorandum, the Department confirms that they are and undertakes to correct them at the earliest opportunity. **The Committee accordingly reports regulations 68(a)(i) and 82 for defective drafting, acknowledged by the Department.**

2 S.I. 2019/644: Reported for requiring elucidation

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Regulations 2019

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

2.2 These Regulations amend the EU Emissions Trading System compliance cycle deadline for UK participants for the 2018 scheme year. The preamble recites that consultation was carried out in accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (which includes public consultation); but the Explanatory Memorandum states (at paragraph 10.2) that no formal public consultation has taken place. The Committee asked the Department for Business, Energy and Industrial Strategy to explain which is correct. In a memorandum printed at Appendix 2, the Department explains that it carried out the necessary statutory consultation but that no public consultation was included as part of that process. The Secretary of State did not consider it appropriate to consult representative bodies because of the urgency of these Regulations and the negligible administrative impacts foreseen on operators. **The Committee accordingly reports these Regulations for elucidation, provided in the Department's memorandum.**

3 S.I. 2019/652: Reported for doubtful *vires* and for defective drafting

Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there appears to be doubt whether they are *intra vires* and that they are defectively drafted in several respects.**

3.2 These Regulations make technical amendments to instruments relating to food and feed hygiene and safety in Northern Ireland to deal with deficiencies arising from the withdrawal of the United Kingdom from the European Union. The Committee asked the Department of Health and Social Care (who forwarded the request to the Food Standards Agency in Northern Ireland) to explain why the text of this instrument is different to the text of the instrument laid for sifting and consequently how paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 has been satisfied.

3.3 In a memorandum printed at Appendix 3, the Department explains that an earlier draft of the instrument was sent to the Minister for signing in error. Paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 states that a Minister may not make an instrument under section 8(1) of the 2018 Act subject to the negative procedure unless the Minister has laid a draft of the instrument (and accompanying memorandum) before each House of Parliament and the relevant Committees in both Houses have made a recommendation as to the appropriate procedure for the instrument within the relevant period or the relevant period has expired. An instrument made in a different form to

the instrument laid before each House under paragraph 3(2) does not comply with that paragraph. **The Committee accordingly reports these Regulations for appearing to be of doubtful *vires*.**

3.4 The Committee also noticed numerous typographical errors in the instrument. In its memorandum, the Department acknowledges that these errors are also a result of an earlier draft of the instrument being sent to the Minister for signing in error. **The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department.**

4 S.I. 2019/653: Reported for defective drafting

Network and Information Systems (Amendment etc.) (EU Exit) Regulations 2019

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

4.2 These Regulations amend redundant provisions in the Network and Information Systems Regulations 2018 which provide measures aimed at boosting the overall level of security of critical network and information systems. The Committee asked the Department for Digital, Culture, Media and Sport to explain the inconsistency between paragraph 11(b) of the Schedule (which omits regulation 12(11) of the 2018 Regulations) and paragraph 11(c) of the Schedule (which amends regulation 12(11) of the 2018 Regulations). In a memorandum printed at Appendix 4, the Department explains that paragraph 11(b) incorrectly omits paragraph 12(11) and undertakes to correct the error in an amending instrument. The Committee agrees that this error is not appropriate for correction by correction slip. **The Committee accordingly reports paragraph 11 of the Schedule for defective drafting, acknowledged by the Department.**

5 S.I. 2019/790: Reported for doubtful *vires*

North Devon District Council Harbour Authority (Removal of Pilotage Functions) Order 2019

5.1 **The Committee draws the special attention of both Houses to this Order on the ground that there appears to be a doubt as to whether it is *intra vires*.**

5.2 This Order was made by the Secretary of State under section 14 of the Harbours Act 1965 and section 1(4A) of the Pilotage Act 1987 using the negative resolution procedure, which means that it is subject to annulment in pursuance of a resolution of either House of Parliament. It appeared to the Committee that while the negative procedure was correct for an instrument made under section 1(4A) of the Pilotage Act, it was not correct for an instrument made by the Secretary of State under section 14 of the Harbours Act. By virtue of section 54 of that Act, an instrument made under section 14 is not required to be subject to any parliamentary procedure unless it is made by a person exercising a function delegated under section 42A. This Order is made by the Secretary of State directly; it follows that it is not required to be subject to any parliamentary procedure. The Committee asked the Department for Transport to confirm that this Order combines

powers subject to the negative procedure and powers subject to no parliamentary procedure and to justify the combination. In a memorandum printed at Appendix 5, the Department acknowledges that in fact the Secretary of State did not have the power to make any provision under section 14 of the Harbours Act as that power has been entirely delegated to the Marine Maritime Organisation. The Department undertakes to rectify the error. The Committee notes that the provision made under the Harbours Act was not intended to have significant substantive effect. The question remains, of course, whether the presence of an ultra vires provision in the instrument invalidates the whole or whether it can be severed. The Committee expresses no opinion on that point, which is a matter for the courts. **The Committee accordingly reports the Order for appearing to be of doubtful *vires*, acknowledged by the Department.**

6 S.I. 2019/792: Reported for defective drafting

Syria (Sanctions) (EU Exit) Regulations 2019

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

6.2 This instrument contains sanctions regulations made under the Sanctions and Anti-Money Laundering Act 2018 ("the 2018 Act"). Their purpose is to encourage the Syrian regime to refrain from actions, policies or activities which repress the civilian population in Syria and to participate in negotiations to reach a negotiated settlement to bring about a peaceful solution to the conflict in Syria. The regulations include provisions for the designation of persons, both individuals and companies, for the purposes of (amongst other things) imposing financial sanctions. The relevant sanctions are contained in Part 3 of the Regulations.

6.3 The Regulations also contain a licensing regime under which the Secretary of State may issue licences to authorise acts which would otherwise be a breach of the financial sanctions imposed on designated persons by Part 3 of the Regulations. But a licence may only be issued where it is for a purpose set out in Part 2 of Schedule 6 to the Regulations. Those purposes include, at paragraph 16, matters relating to financial transactions involving the Central Bank of Syria and the Commercial Bank of Syria. Sub-paragraphs (3) and (5) of paragraph 16 operate on the basis that both those institutions will be designated persons for the purposes of Part 3 of the Regulations, since both sub-paragraphs contain an express reference to "the date on which [the bank] became a designated person".

6.4 The provisions of the Regulations which allow a person to be designated are made under section 9(2) of the 2018 Act. That section enables sanctions regulations to confer a power on the Secretary of State or the Treasury to designate persons for the purposes of the regulations, and in this case the power to designate is conferred on the Secretary of State by regulation 5. Since the power to designate is contained in the Regulations themselves, it cannot be assumed that a particular individual or institution will be a designated person until the Regulations are made and come into force and the power to designate under the Regulations has been exercised. Also, section 22 of the 2018 Act confers a power on the Secretary of State to revoke a designation once made, and therefore it cannot be assumed that a designation once made will continue in force for all time. Given this background, the Committee asked the Foreign and Commonwealth Office ("FCO") to explain how it

was compatible with the enabling legislation for paragraph 16 to be drafted on the basis that both the Central Bank of Syria and the Commercial Bank of Syria will be designated persons under the Regulations.

6.5 In a memorandum at Appendix 6, the FCO explains that paragraph 16(3) and (5) of Schedule 6 mirrors provisions which form part of the existing EU sanctions regime, and that paragraph 16(3) and (5) has been drafted in a way that ensures that the scope of the licensing regime under the Regulations is the same as that of the existing EU regime in so far as it relates to the transfer of funds or resources by or through the Central Bank of Syria or the Commercial Bank of Syria. The FCO acknowledges that the drafting of paragraph 16(3) and (5) assumes that the two banks will be designated under the Regulations. It is argued however there is nothing in those provisions which fetters the discretion of the Secretary of State, either in deciding whether or not to designate the banks or to revoke a designation once made. The FCO also argues that, if the banks are not designated persons, then the structure of the Regulations is such that paragraph 16(3) and (5) will not be capable of applying.

6.6 The Committee considers it is important that the drafting of the Regulations does not appear to pre-judge how the Secretary of State will exercise powers conferred by the Regulations once they are in force. While the FCO may be right that paragraph 16 will not have the effect of fettering the Secretary of State's discretion, that does not in the Committee's view justify adopting a drafting approach which assumes that powers conferred by the Regulations and the 2018 Act will be exercised in a particular way. There would have been nothing, in the Committee's view, to prevent the Regulations making it explicit that the application of paragraph 16(3) and (5) to the Central Bank of Syria and the Commercial Bank of Syria is conditional on the banks being designated by the Secretary of State for the purposes of Part 3. In this respect, the Committee is not convinced by the argument that it is sufficient to rely on the necessary implication to be drawn from the wording of paragraph 16(3) and (5). In the view of the Committee, simply relying on the implication to be drawn from the wording of paragraph 16, leaves it unclear as to whether other provisions of that paragraph (such as sub-paragraph (1)) are also intended to apply only where the bank concerned is the designated person. **Accordingly, the Committee reports paragraph 16 of Schedule 6 for defective drafting.**

7 S.I. 2019/809 and S.I. 2019/820: Reported for requiring elucidation

Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019; Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

7.1 **The Committee draws the special attention of both Houses to these instruments on the ground that they require elucidation in one respect.**

7.2 These instruments amend legislation relating to plant health in England and Northern Ireland. In each case the instrument contains amendments which will have the effect of conferring exemptions on persons bringing in a small quantity of plant material originating in the European Union or Switzerland. Where the exemption applies the person will not be subject to certain prohibitions and requirements, the breach of which would otherwise constitute a criminal offence. The provisions containing these

amendments are regulation 4(5)(a) and (14) of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 and regulations 3(9)(a) and 4(9) of the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

7.3 In each case the exemption only applies if the amount of plant material brought in in a person's baggage is limited to a "small quantity". However, there is nothing in the relevant legislation to explain or clarify what is meant by a "small quantity" for the purposes of each of the exemptions. Since the exemptions may be relevant to whether a person is committing a criminal offence, the Committee asked the Department to explain:

- what is meant in each case by a "small quantity" of relevant material;
- why it is not practicable or appropriate to be more specific in indicating the exempt amount; and
- how a person bringing in relevant material in their baggage will be able to know whether they are bringing in a small quantity so that they do not commit an offence if they fail to comply with any prohibitions or requirements which would otherwise apply.

7.4 In a memorandum printed at Appendix 7, the Department explains that the exemptions created by the amendments replicate the exemptions for material originating from the EU which appear in the existing legislation; and that the wording of the existing legislation reflects the wording of Council Directive 2000/29/EC which it implements. The Department considers that it would have been outside the scope of section 8(1) of the European Union (Withdrawal) Act 2018 to change the way in which the exemptions are framed. To the extent that defining the scope of the exemptions by reference to a "small quantity" is a deficiency because of its inherent lack of clarity or precision, it is not a deficiency which can be remedied using the powers conferred by section 8(1) because that section is limited to remedying deficiencies arising from the UK's withdrawal from the European Union.

7.5 The Committee accepts that the Department was entitled to reach the view that it was outside the scope of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 to change the exemptions so that they no longer operate by reference to whether or not a person is bringing in a "small quantity" of relevant plant material. It remains the case however that relying on "small quantity" for defining the scope of the exemptions makes it very difficult to know with any certainty when the exemptions will apply, in circumstances where the applicability of the exemption may affect whether or not a person is committing an offence. The Committee notes however the assurances given by the Department that this has not caused complaints from members of the public in the past and that, were this ever to become an issue for travellers bringing in relevant material in the future, the Department and the Northern Ireland Department for Agriculture, Environment and Rural Affairs would decide what action was appropriate in the light of the problems being raised.

7.6 **The Committee accordingly reports regulation 4(5)(a) and (14) of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 and regulations 3(9)(a) and 4(9) of the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 for elucidation, provided by the Department's memorandum.**

8 S.I. 2019/825: Reported for defective drafting

Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

8.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two related respects.**

8.2 These Regulations amend the Railways (Safety Management) Regulations (Northern Ireland) 2006 to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

8.3 The Schedule inserts a new Schedule 7 into the 2006 Regulations. Paragraph 2 defines a number of terms for the purposes of the new Schedule. The Committee asked the Department for Transport to explain why the paragraph includes a definition of "risk to whole" even though this term does not appear elsewhere in the Schedule. In a memorandum printed at Appendix 8 the Department acknowledges and apologises for this error. It points out that the term "risk to society as a whole" appears in paragraph 12(3)(f) of new Schedule 7, and it is this term that should have been defined in paragraph 2 instead of "risk to whole". **The Committee accordingly reports paragraph 2 of new Schedule 7 for defective drafting, acknowledged by the Department.**

8.4 The Committee also asked about the intended meaning of "whole society" in risk category 6 in paragraph 14 of new Schedule 7. The Department explains in its memorandum that the term is intended to refer to the risk category identified in paragraph 12(3)(f) of new Schedule 7, there expressed as "risk to society as a whole". Paragraph 12(3) forms part of the methodology for the fourth step of the procedure by which the Department for Infrastructure is to assess the achievement by the Northern Irish railway system of the appropriate common safety target. This step must be undertaken with reference to significant accidents in the relevant year, with a specified proportion of the year's significant accidents to be taken into account for each risk category. In the case of the risk category "risk to society as a whole", the total number of significant accidents should be taken into account. "Whole society" in paragraph 14 is intended as a descriptive label in order to specify the correct measurement units for the assessment. The Department contend it is "clear", in the context of the procedure as a whole, "that the "whole society" risk is an aggregate of all the other risk categories and the relevant formula in the table identifies it as such".

8.5 The Committee disagrees: it considers that the meaning of "whole society" in paragraph 14 of new Schedule 7 is wholly unclear, particularly in view of: (a) the failure to define "risk to society as a whole" in paragraph 2, and (b) the absence of a cross-reference to paragraph 12(3)(f) in paragraph 14. **The Committee accordingly reports paragraph 14 of new Schedule 7 for defective drafting.**

Instruments not reported

At its meeting on 8 May 2019 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Instrument requiring affirmative approval

S.I. 2019/826 * Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

Draft instrument requiring affirmative approval

Draft S.I. Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019

Instruments subject to annulment

S.I. 2019/843 Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2019

S.I. 2019/853 Air Navigation (Overseas Territories) (Amendment) Order 2019

S.I. 2019/858 REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

S.I. 2019/861 Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019

S.I. 2019/867 Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019

S.I. 2019/872 Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019

S.I. 2019/879 Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019

Instruments subject to annulment (Northern Ireland)

S.R. 2019/86 Allocation of Housing and Homelessness (Eligibility) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

S.R. 2019/89 Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019

* A memorandum printed at Appendix 9 contains the Department for Transport's replies to some questions about the instrument raised by the Committee.

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2019/756 Civil Aviation Act 1982 (Anguilla) Order 2019

S.I. 2019/852 Anguilla Constitution (Amendment) Order 2019

Appendix 1

S.I. 2019/518

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

1. In its letter to the Department of 24th April 2019, the Committee requested a memorandum on the following points:

> *Explain why these Regulations, which make amendments to Commission Implementing Regulation (EU) 2015/909, do not amend the limit expressed in Euros in Article 7(2) to a limit expressed in pounds sterling.*

2. Commission Implementing Regulation (EU) 2015/909 applies to all railway services, including cross-border services between the United Kingdom and Europe (i.e. services using the Channel Tunnel and the Enterprise line services between Northern Ireland and the Republic of Ireland). Continuing to express this amount in Euros avoids the potential for divergence in the threshold between the United Kingdom and Europe which could result in the threshold being breached, with the result that different rules were applicable, one side of the border but not the other in respect of the same train service.

> *In regulation 68(a)(i), confirm that the reference to "regulation 23(4) to (10), (9) and (10) of the 2016 GB Regulations" is incorrect.*

3. We confirm that this reference is incorrect; the reference should be to regulations 23(1) to (3), (9) and (10)". We will correct this at the earliest opportunity.

> *Confirm that in regulation 82, the reference to paragraph 3 of Schedule 3 to the 2016 NI Regulations is incorrect.*

4. We confirm that this reference is incorrect; the reference should be to paragraph 3 of Annex 7 to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (as replaced by Commission Delegated Decision (EU) 2017/2075), to which Schedule 3 to the 2016 NI Regulations refers.

5. We are most grateful to the JCSI for pointing out the two cross-referencing errors and will make further provision to deal with them at the earliest suitable opportunity.

Department for Transport

30 April 2019

Appendix 2

S.I. 2019/644

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Regulations 2019

1. In its letter to the Department dated 24 April 2019 the Joint Committee requested a memorandum on the following point in relation to the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Regulations 2019 (the "Regulations"):

> *The preamble states that statutory consultation was carried out and the Explanatory Memorandum (at paragraph 10.2) states that no formal public consultation has taken place. Which is correct?*

2. The necessary statutory consultation was carried out, but the Department acknowledges that the preamble should have been clearer about the nature of the consultation.

3. In the circumstances of these Regulations, it was not considered appropriate or necessary to consult bodies or persons pursuant to Section 2(4)(c) of the Pollution Prevention and Control Act 1999 ("such bodies appearing [to the Secretary of State] to be representative of the interests of local government, industry, agriculture and small business") because of the urgency of the Regulations and the timeframe and negligible administrative impacts foreseen on operators. As such, it is right as explained in the Explanatory Memorandum that no public consultation was undertaken, but before making the Regulations the Governments of Scotland, Wales and Northern Ireland and UK Regulators were consulted.

Department for Business, Energy and Industrial Strategy

30 April 2019

Appendix 3

S.I. 2019/652

Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

1. In its letter to the Department of Health and Social Care of 24 April 2019, the Committee requested a memorandum on the following point:

> *Explain how the requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 have been satisfied given that the text of this instrument is different to the text of the instrument laid for shifting (in particular, regulation 1).*

2. The regulations as cited above were drafted by the Food Standards Agency in Northern Ireland, and therefore, the Food Standards Agency in Northern Ireland is the appropriate body to address these concerns. Although the Committee wrote to the Department of Health and Social Care on 24 April 2019, the Food Standards Agency in Northern Ireland only became aware of this matter on 30 April 2019. The Food Standards Agency in Northern Ireland responds to the Committees query as follows:

3. We understand that an earlier draft of SI 652 was sent to the Minister for signing, in error. Regulation 1 of the earlier draft, as sent to the Minister, reads as follows:

> *"These Regulations may be cited as The Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and come into force on the later of exit day or 21 days after the day on which they are made."*
>
> This wording was subsequently amended to reflect the revised exit date which therefore allowed these Regulations to be made in line with the 21-day rule. Therefore Regulation 1 of the later draft, that was sent for laying, reads as follows:
>
> *"These Regulations may be cited as the Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and come into force on exit day."*
>
> We regret that the incorrect document was sent at this stage.

4. In addition, the Committee has identified numerous minor drafting errors in the above instrument and has asked the Department of Health and Social Care for a memorandum in relation to the following points, which the Food Standards Agency in Northern Ireland addresses as follows:

5. **At Regulation 2(2) the use of "(a)" should be removed and the text should run on from the introductory wording.**

We acknowledge the use of the unnecessary "(a)" within this paragraph.

6. **At Regulations 2(3) a semi colon is used instead of a full stop.**

We acknowledge the incorrect use of the semi colon as opposed to a full stop.

7. **At Regulation 4(1) a full stop should be used as opposed to a dash.**

We acknowledge the incorrect use of a dash within this regulation.

8. **At Regulation 4(2) a lower case "I" should be used in both cases.**

We acknowledge that a lower case "I" should be used.

9. **At Regulation 4(3) the word "food stuffs" should be one word.**

We acknowledge that the word "food stuffs" should be one word.

10. **At Regulation 5(1) a full stop should be used as opposed to a dash.**

We acknowledge that a full stop should be used.

11. **At Regulation 6(1) a full stop should be used as opposed to a dash.**

We acknowledge that a full stop should be used.

12. **At Regulation 6(2) the "(a)" should be removed.**

We acknowledge the use of the unnecessary "(a)" in this paragraph.

13. **At Regulation 6(3) lower case "I" should be used for the word "In" in both places.**

We acknowledge that the lower case "I" should be used.

14. **At Regulation 6(6) a comma should be used instead of the first "and".**

We acknowledge that a comma should be used.

15. **At Regulation 6(7) lower case "O" in omit and lower case "I" in in should be used.**

We acknowledge that the lower-case letter should be used in both instances.

16. **At Regulation 6(14) the gap between 37 and (1) should be removed.**

We acknowledge that this gap should be removed.

17. **At Regulation 8(3) the "(a)" should be removed and the text run should on from the introductory wording.**

We acknowledge that the "(a)" should be removed.

18. **At Regulations 8(4) the lower case "O" in omit and lower case "I" in in should be used and a semi colon should be inserted after sub paragraph "(a)".**

We acknowledge the use of the lower case in both instances and the use of the semi colon.

19. **Footnote (c) on page 2 should read "110".**

We acknowledge that footnote (c) should read "110".

20. We regret that these errors were contained within this document. As outlined above, an earlier draft was sent to the Minister for signing, in error. This explains the errors contained within the document which have largely been corrected in the later draft that was sent for laying.

Food Standards Agency, Northern Ireland

2 May 2019

Appendix 4

S.I. 2019/653

Network and Information Systems (Amendment etc.) (EU Exit) Regulations 2019

1. Thank you for drawing to our attention a drafting error in paragraph 11 of the Schedule to the Network and Information Systems (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/653) (the 2019 Regulations).

2. Paragraph 11(c) of the Schedule to the 2019 Regulations is correct and amends regulation 12(11) of the Network and Information Systems Regulations 2018 (SI 2018/506) (the 2018 Regulations), as intended. Paragraph 11(b) of that Schedule incorrectly omits paragraph (11) of regulation 12 of the 2018 Regulations. This is an error which we intend to amend in the Network and Information Systems (Amendment) (EU Exit) (No. 2) Regulations 2019, a proposed instrument which has not yet been made and is currently being consulted on. The amended paragraph 11(b) will omit only paragraph (10) of regulation 12 of the 2018 Regulations and not paragraph (11).

3. We sought the view of the SI Registrar as to whether this correction could be made by way of a correction slip, but he took the view that this is slightly beyond the bounds of a correction slip.

4. We are grateful to the Committee for drawing this matter to the attention of the Department.

Department for Digital, Culture, Media and Sport

30 April 2019

Appendix 5

S.I. 2019/790

North Devon District Council Harbour Authority (Removal of Pilotage Functions) Order 2019

1. In its letter to the Department of 24th April 2019, the Committee requested a memorandum on the following point:

> *Confirm that this instrument combines powers subject to negative resolution and powers subject to no parliamentary procedure, and justify the combination.*

2. Article 2 of the instrument was made under section 1(4A) of the Pilotage Act 1987 (c.21) and the negative resolution parliamentary procedure applies by virtue of section 30 of that Act.

3. Article 3 of the instrument was made under section 14 of the Harbours Act 1964 (c. 40). Section 54 of that Act provides that the negative resolution parliamentary procedure applies for instruments made by any person in the exercise of a delegable function under section 14, if the relevant authority is the Secretary of State.

4. In the light of the Committee's comments, the Department has given this matter further consideration and has now concluded that the Secretary of State did not have the power to make article 3 of the instrument. The reason for this is that the function of amending harbour revision orders under section 14 of the Harbours Act 1964 was entirely delegated to the Marine Management Organisation, by virtue of the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).

5. The Department apologises for the error and is currently considering how best to rectify the situation. The Department would like to assure the Committee that the error does not have any substantive impact, because the amendment made in article 3 was simply to correct a typographical error in the Ilfracombe Harbour Revision Order 1996 (S.I. 1996/2103).

Department for Transport

30 April 2019

Appendix 6

S.I. 2019/792

Syria (Sanctions) (EU Exit) Regulations 2019

1. On 24 April 2019, the Committee requested that the Foreign and Commonwealth Office ("FCO") submit a memorandum on the following points in relation to the Syria (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/792) ("the Regulations"):

> *1. Is the expression "prominent person" in regulation 6(3)(a) defined? If not, how is it possible to know who qualifies as a "prominent person" for the purposes of that regulation?*
>
> *2. Paragraph 16(3) of Schedule 6 refers to "the date on which the Central Bank of Syria became a designated person" and paragraph 16(5)(b) refers to "the date on which the Commercial Bank of Syria became a designated person". How are these references compatible with:*
>
> *(a) section 9(2) of the Sanctions and Anti-Money Laundering Act 2018 and regulation 5 which make designation a function to be carried out by the Secretary of State under the Regulations;*
>
> *(b) section 22(2) of that Act which confers a power on the Secretary of State to revoke a designation made under the Regulations?*

2. The FCO is grateful for the Committee's consideration of this instrument and responds as follows.

3. As a starting point in relation to both of these questions, and as set out in paragraph 2.1 to the Explanatory Memorandum relating to the Regulations, they are intended to replace, with substantially the same effect, the EU sanctions regime in relation to Syria, contained in Council Decision 2013/255/CFSP, concerning restrictive measures against Syria and Council Regulation (EU) No 36/2012 ("the Council Decision"), concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 ("the Council Regulation").

Question 1

4. The expression "prominent person" in regulation 6(3)(a) is not defined in the Regulations.

5. Regulation 6(3)(a) is intended to replace the provision, contained in article 27(2)(a) of the Council Decision and article 15(1a)(a) of the Council Regulation, which provides for certain sanctions measures to be imposed against "leading businesspersons operating in Syria", pursuant to which a number of persons have already been designated under the EU regime.

6. When read in its legislative context, regulation 6(3)(a) provides that being a prominent person who operates or controls a business in Syria is a basis pursuant to which a person may be designated, in that they are or will have been involved in an activity mentioned in paragraph (2)(a), namely repressing the civilian population in Syria or supporting or benefitting from the Syrian regime.

7. The European Court of Justice has upheld designations that have been made on this basis, see for example the case of *Issam Anbouba v Council* (Cases T-563/11 and T-592/11) and the case of *Tarif Akhras v Council* (Case Y-579/11). As noted by the Court in paragraph 48 of the judgment of the European Court of Justice in the case of *Anbouba*, where a businessperson is "prominent" in Syria (because for example they are a well-known business person who operates across a number of different sectors), it is a justifiable conclusion they are or will have been involved in either repressing the civilian population in Syria or supporting or benefitting from the Syrian regime:

> *"in the light of the authoritarian nature of the Syrian regime and of the close control that the State exercises over the Syrian economy, the Council was justified in taking the view that the activities of one of the principal Syrian businessmen, operating in numerous sectors, could not have succeeded without enjoying the favours of that regime and in return providing a level of support for that regime."*

8. The FCO would assert that the expression "prominent" is a term whose meaning is clear on its own and that, in any event, further interpretative assistance as to what qualifies as a "prominent person" for the purpose of regulation 6(3)(a) can be derived from the context in which that provision appears.

Question 2

9. Paragraph 16(3) and (5) of Schedule 6 to the Regulations (when taken together with the transitional provision contained in regulation 103(1)) mirror the provisions, contained in article 21a(1)(a) and 21c(1)(a) of the Council Regulation, which allow frozen funds or economic resources be to be transferred by or through the Central or Commercial Banks of Syria in order to comply with certain trade contracts, provided that the funds or economic resources were frozen after the date on which those banks were designated under the existing EU regime.

10. These licensing grounds currently exist in the EU regime to reflect the fact that there may be circumstances in which it is appropriate to authorise transfers of frozen funds or economic resources by or through both banks, notwithstanding their designation.

11. Paragraph 16(3) and (5) ensures that this existing licencing derogation will continue to be available immediately upon the UK's withdrawal from the EU, which is the policy intent in the event that either or both of these banks were to be designated under the Regulations. A smooth transition in licensing grounds is considered necessary both to prevent what would otherwise be an unacceptable increase in the scope of licensing grounds for persons designated under the Syria sanctions regime, but also to provide legal certainty for any third parties currently relying on this licensing derogation.

12. We recognise that paragraphs 16(3) and (5) of Schedule 6 have been drafted in order to prepare for the eventuality that the Central and Commercial Banks of Syria will be designated under the Regulations. However, there is nothing in either of these provisions which requires such a designation decision to take place.

13. The power to authorise the Secretary of State to designate persons for the purposes of the regulations, as set out in section 9(2) of the Act, is provided for in regulation 5 of the Regulations. Section 22(2) of the Act then confers a power on the Secretary of State to revoke any designations made under the Regulations. There is nothing contained in paragraph 16(3) or (5) of Schedule 6 that fetters this discretion—the Secretary of State retains a power to designate and if designated, revoke a designation, in relation to either of both of these banks.

14. Furthermore, regulation 61(2)(a), which confers a power on the Treasury to issue licences that authorise acts by a particular person, is only available where, "*in relation to acts which would otherwise be prohibited by regulations 11 to 15, the Treasury consider that it is appropriate to issue the licence for a purpose set out in Part 2 of Schedule 6*". Accordingly, paragraph 16(3) and (5) of Schedule 6 will only apply if a designation under regulation 5 has already taken place in relation to the Central or Commercial Banks of Syria respectively.

15. We therefore consider that paragraph 16(3) and (5)(b) are compatible with the provisions identified.

Foreign and Commonwealth Office

30 April 2019

Appendix 7

S.I. 2019/809 and S.I. 2019/820

Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019; Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

> *The listed provisions (see below) contain amendments which confer an exemption on persons bringing in relevant plant material originating in the European Union or Switzerland. Where the exemption applies the person will not be subject to certain prohibitions and requirements, the breach of which would otherwise constitute a criminal offence. Under each of the provisions, the exemption only applies where the person brings in a "small quantity" of relevant material in their baggage.*
>
> *Explain:*
>
> - *what is meant in each case by a "small quantity" of relevant material;*
> - *why it is not practicable or appropriate to prescribe specific amounts for the purposes of the exemptions;*
> - *how a person who is bringing in relevant material in their baggage will be able to know whether the amount they are bringing in falls within the "small quantity" exemption so that they do not commit an offence if they fail to comply with any prohibitions or requirements which would otherwise apply.*
>
> *(The listed provisions referred to above are:*
>
> *(a) regulation 4(5)(a) and (14) of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019;*
>
> *(b) regulation 3(9)(a) and 4(9) of the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019).*

2. The Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 have been made on behalf of the Department of Agriculture, Environment and Rural Affairs ("DAERA") by the Parliamentary Under Secretary of State for the Department of Environment, Food and Rural Affairs, in the absence of a Northern Ireland Executive.

3. The meaning of "small quantity" of relevant material will depend on the particular type of material being brought into England or Northern Ireland from the EU. The provisions in regulation 4(5)(a) and (14) of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 are based on existing provisions in the Plant Health (Forestry) Order 2005 and the Plant Health (England) Order 2015 which implement the final paragraphs of Articles 6(5) and 10(2) of Council Directive 2000/29/EC (see, for example, article 22 of the Plant Health (England) Order 2015). The equivalent

provisions in respect of the particular type of material being brought into Northern Ireland from the EU are regulations 3(9)(a) and 4(9) of the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019) which are based on existing provisions in the Plant Health (Wood and Bark) Order (Northern Ireland) 2006 and the Plant Health Order (Northern Ireland) 2018 (see, for example, article 23 of the Plant Health Order (Northern Ireland) 2018).

4. The exemptions in Articles 6(5) and 10(2) of Council Directive 2000/29/EC are designed to allow some controlled plant material to be moved within the EU for personal use where it would not pose a plant health risk. As the plant health risk will vary according to the type of material in question and other factors such as the production area, any quantitative definition would need to specify different quantities in relation to different types of plant material. It is important to note that the EU legislator has not provided a definition of "small quantities" in Articles 6(5) and 10(2) of Council Directive 2000/29/EC. Given that the EU legislator has not chosen to specify quantities in these provisions, any attempt to have specified quantities in domestic legislation would have been inconsistent with the above EU legislation. In the case of the existing exemptions, the common sense judgement of customs and other competent authorities as to whether the amount in question in any particular case was a "small quantity" would be tested against the judgement of the court, and the Department and DAERA assume that this was the intention of the EU legislator.

5. The amendments contained in regulation 4(5)(a) and (14) (and in the case of Northern Ireland, regulations 3(9)(a) and 4(9)) seek to replicate the current exemptions for material originating in the EU when the UK leaves the EU. The Department and DAERA do not consider that it would have been appropriate or within the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 to have prescribed specific amounts for the purposes of the exemptions contained in these amendments as the power in section 8(1) is only available to deal with deficiencies arising from the UK's withdrawal from the EU. In the Department's and DAERA's view, the absence of specific amounts for the purposes of the exemptions is not such a deficiency.

6. The amendments contained in regulation 4(5)(a) and (14) (and in the case of Northern Ireland, regulations 3(9)(a) and 4(9)) are based on long-standing provisions which have not been found wanting in the past. In particular, neither the Department nor DAERA is aware of any complaints from members of the public about the meaning of "small quantity". It is therefore unlikely that this should become an issue for travellers bringing relevant material into England or Northern Ireland from the EU following the UK's withdrawal from the EU, but if that were the case, the Department and DAERA would decide what action was appropriate in light of any problems being raised.

Department for Environment, Food and Rural Affairs

30 April 2019

Appendix 8

S.I. 2019/825

Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

1. In its letter to the Department of 24th April 2019, the Committee requested a memorandum on the following two points.

> *1. Explain why paragraph 2 of the new Schedule 7 to the Railways (Safety Management) Regulations (Northern Ireland) 2006 includes of definition of "risk to whole" when this term does not appear elsewhere in the Schedule.*
>
> *2. Explain the intended meaning of "whole society" in risk category 6 in paragraph 14 of the new Schedule 7.*

2. In relation to question 1, the Department acknowledges and apologises for this error. The term "risk to whole" does not appear in Schedule 7. The term "risk to society as a whole" appears in paragraph 12(3)(f) of the Schedule and it is this term that should have been defined in paragraph 2 in place of "risk to whole".

3. In relation to question 2, "whole society" in risk category 6 of paragraph 14 of the new Schedule 7 is intended to refer to the risk category identified in paragraph 12(3)(f) of the Schedule, there expressed as "risk to society as a whole".

4. Paragraph 12 provides the methodology for the fourth step of the assessment procedure by which the Department for Infrastructure may calculate the achievement by the Northern Irish railway system of the appropriate Common Safety Target. This step of the assessment procedure must be undertaken with reference to significant accidents in the relevant year, with a specified proportion of the year's significant accidents to be taken into account for each risk category. In the case of the risk category "risk to society as a whole" set out at paragraph 12(3)(f), the total number of significant accidents should be used. "Whole society" in paragraph 14 is used as a descriptive label in order to specify the correct measurement units for this calculation. In the context of the procedure as a whole it is clear that the "whole society" risk is an aggregate of all the other risk categories and the relevant formula in the table identifies it as such.

5. We are most grateful to the JCSI for these comments. Since legislative competence for railways legislation in Northern Ireland is devolved to the Northern Ireland Executive, we will liaise with the Northern Ireland Civil Service to ensure that these comments are reviewed with a view to amendments being made, as appropriate, at the earliest suitable opportunity. If the current suspension of the Northern Ireland Assembly continues, we would expect any corrections to be made by the Secretary of State for Transport on behalf of the Northern Ireland Executive, in the same way as the original instrument was made.

Department for Transport

30 April 2019

Appendix 9

S.I. 2019/826

Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

1. In its letter to the Department of 24th April 2019, the Committee requested a memorandum on the following points. Our responses are set out beneath each question.

> *Explain why the new definition of "the Directive" inserted by reg. 3(2)(b) includes a reference to Directive 2012/34/EU as amended from time to time after exit day (as well as before that day).*

2. This new definition, inserted into the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "2016 Regulations"), is used in three contexts.

3. First, it is used in relation to operator licences for railway undertakings granted in a EEA state pursuant to the Directive (see regulation 43(4)). It is important that such licences will continue to be recognised in Northern Ireland after exit day to ensure that train operators licensed in the Republic of Ireland can operate in Northern Ireland and hence the definition of the Directive needs to incorporate any changes made to the Directive after exit day.

4. Second, the new definition is used in the revised definition of "railway infrastructure" in the 2016 Regulations. Given the importance of the Enterprise Line running between Northern Ireland and the Republic of Ireland, it is desirable for this definition to keep in alignment with the definition used by member States/EEA states pursuant to the Directive (as that Directive may change from time to time) so that the definition of what constitutes "railway infrastructure" either side of the border remains consistent.

5. Third, the definition is used in the revised definition of "railway undertaking". It is important that the rights and obligations of railway undertakings in the 2016 Regulations apply to those railway undertakings that are licensed in member States/EEA states including, in particular, the Republic of Ireland.

6. The ambulatory nature of the definition of the Directive reflects a policy decision taken by the Northern Ireland Civil Service in light of the particular importance of cross-border services between Northern Ireland and the Republic of Ireland and the role played by train operators licensed in the Republic of Ireland.

7. There may be a need to further modify the definition of "railway undertaking" to ensure that licenses granted in Northern Ireland and in Great Britain will continue to be expressly caught by the definition. However, we consider that there is no immediate need to do this as the existing licenses will continue to be in force by virtue of the saving provision in paragraph 37 of Schedule 8 of the European Union (Withdrawal) Act 2018.

> *Explain why the new definition of "the Directive" inserted by reg. 30(2)(c) includes a reference to Directive 2007/59/EC as amended from time to time after exit day (as well as before that day).*

8. This new definition, inserted in the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010, is used in the definition of a "European train driving licence" and in the deeming provision relating to the definition of a "recognised trainer" inserted by regulation 38. "European train driving licences" are licences granted by safety authorities in member States/EEA states, which will continue to be subject to the provisions of the Directive after exit day; likewise, the deeming provision (new regulation 29(1A)) refers to trainers recognised in a member State/EEA state pursuant to the Directive. It is therefore appropriate in these instances that the reference to the Directive reflects the state of the Directive as it may change from time to time after exit day so that train driving licences issued in and trainers recognised by member States/EEA states continue to be recognised in Northern Ireland. Other references to the Directive are rubric in the Schedules or in Schedules that relate to European train driving licences or trainers recognised in a member States/EEA states.

Explain why it is considered that those provisions are authorised by section 8(1) of the European Union (Withdrawal) Act 2018.

9. As explained above, the regulations need to recognise licences and accreditations granted by member States pursuant to the regime established by the Directive, and in these instances it is appropriate and within the powers of section 8(1) of the European Union (Withdrawal) Act 2018 for the regulations to refer to the Directive as amended from time to time after exit day.

10. The United Kingdom's exit from the EU will mean that existing arrangements for reciprocal recognition of train driving and operator licences and trainer accreditations will no longer operate in the same way meaning that there are deficiencies to be addressed in the legislation currently giving effect to that reciprocal recognition regime (of the 2018 Act). The current regulations represent the provision that the Secretary of State considers (under section 8(1) of the 2018 Act—see in particular section 8(2)(c) and (d)) to be appropriate to prevent, remedy or mitigate these deficiencies, in this case by ensuring the legislation puts in place a regime to ensure and facilitate continued recognition following the UK's exit from the EU.

11. The current EU regime governing access to rail infrastructure also confers rights which are reciprocal for railway undertakings licensed in the UK and other EEA states to access railway infrastructure in different member states. For Northern Ireland this regime is principally given effect to in Part 2 of the 2016 Regulations. Ensuring that railway infrastructure continues to be defined consistently both sides of the border between Northern Ireland and the Republic of Ireland addresses this area of deficiency in a way that is considered appropriate to facilitate the continued smooth operation of the Enterprise Line between Belfast and Dublin as common infrastructure.

12. Paragraph 2 of Schedule 8 to the 2018 Act is also relevant here. Paragraph 2(1) of that Schedule provides, among other things, that references to EU instruments in pre-exit enactments are to be read as references to the relevant instrument as it has effect immediately before exit day. Paragraph 2(3) however also makes clear that this general position is subject to other provision made by or under the 2018 Act (or any other enactment). Therefore, where this would be an appropriate way to remedy a deficiency under section 8(1), regulations made under that provision can be used to change existing "non-ambulatory" references to EU instruments to ambulatory ones, as has been done here.

Explain why the provision made by reg. 31(4) is not inserted into reg. 4 of the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010.

13. Whilst we consider that regulation 31(4) has the desired effect (of ensuring that the relevant provisions (in paragraphs (4), (5), (7) and (10) of Regulation 4 of the 2010 Regulations) apply so that references to a (Northern Ireland issued) train driving licence also include reference to a European train driving licence or GB train driving licence, we recognise that textual amendment of the relevant provisions (or the insertion of a new paragraph into regulation 4 of the 2010 Regulations) might have been clearer and more transparent than this deeming provision.

14. We are most grateful to the JCSI for these comments. Since legislative competence for railways legislation in Northern Ireland is devolved to the Northern Ireland Executive, we will liaise with the Northern Ireland Civil Service to ensure that these comments are reviewed with a view to amendments being made, as appropriate, at the earliest suitable opportunity. If the current suspension of the Northern Ireland Assembly continues, we would expect any corrections to be made by the Secretary of State for Transport on behalf of the Northern Ireland Executive, in the same way as the original instrument was made.

Department for Transport

30 April 2019