

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

RAILWAYS (AMENDMENT) (EU EXIT)
REGULATIONS (NORTHERN IRELAND) 2019

RAILWAYS (SAFETY MANAGEMENT)
(AMENDMENT) (EU EXIT) REGULATIONS
(NORTHERN IRELAND) 2019

RAIL SAFETY (AMENDMENT ETC.)
(EU EXIT) REGULATIONS 2019

Tuesday 7 May 2019

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The Committee consisted of the following Members:

Chair: MS KAREN BUCK

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

† Beresford, Sir Paul (*Mole Valley*) (Con)

† Bradley, Ben (*Mansfield*) (Con)

† Cowan, Ronnie (*Inverclyde*) (SNP)

† Dunne, Mr Philip (*Ludlow*) (Con)

† Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)

† Ghani, Ms Nusrat (*Parliamentary Under-Secretary
of State for Transport*)

† Heapey, James (*Wells*) (Con)

† Huq, Dr Rupa (*Ealing Central and Acton*) (Lab)

† Jack, Mr Alister (*Dumfries and Galloway*) (Con)

† Jones, Susan Elan (*Clwyd South*) (Lab)

† McLoughlin, Sir Patrick (*Derbyshire Dales*) (Con)

† Mann, John (*Bassetlaw*) (Lab)

† Maskell, Rachael (*York Central*) (Lab/Co-op)

† Morris, Anne Marie (*Newton Abbot*) (Con)

† Percy, Andrew (*Brigg and Goole*) (Con)

Yohanna Sallberg, *Committee Clerk*

† **attended the Committee**

Third Delegated Legislation Committee

Tuesday 7 May 2019

[Ms KAREN BUCK *in the Chair*]

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

4.30 pm

The Parliamentary Under-Secretary of State for Transport (Ms Nusrat Ghani): I beg to move,

That the Committee has considered the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019, No. 826).

The Chair: With this it will be convenient to consider the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019, No. 825) and the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019, No. 837).

Ms Ghani: It is a pleasure to serve under your chairmanship, Ms Buck. I know that there is some confusion about why the superb Rail Minister, my hon. Friend the Member for Harrogate and Knaresborough (Andrew Jones), is not here to present the statutory instruments himself, but he was responding to an urgent question at the Dispatch Box, so I hope the Committee will bear with me.

The instruments will be needed if the UK leaves the EU without a deal and are important in ensuring clarity, certainty and confidence for the rail industry and customers. I shall start by explaining why this Committee is considering them under the urgent “made affirmative” procedure provided for in the European Union (Withdrawal) Act 2018. The instruments were originally laid for sifting under the negative procedure in February. In March, the Lords Secondary Legislation Scrutiny Committee recommended that the affirmative procedure should apply, as it believed that peers might wish to debate the potential impacts on cross-border rail services and those that operate them. Following the recommendation, the Government gave very careful consideration to what the most appropriate procedure was for progressing these important instruments. I would like to take this opportunity to thank the sifting Committees for their work. The Government recognise the valuable role that they have played, and welcome the opportunity to debate the instruments today.

The instruments are important in providing passengers and industry with the confidence and certainty that, should the UK leave the EU without a deal, the rail legislative framework will continue to function effectively. That is particularly important in the case of the SI addressing rail safety in Great Britain. Therefore the Government concluded that, to ensure that the instruments were in place for exit day, using the “made affirmative” procedure was appropriate. The Rail Minister wrote to the Chairs of the sifting Committees in April to explain that decision and the reasons behind it. Given the importance of providing clarity to industry as soon as

possible on the important issue of rail safety, we consider that it remains important to ensure that the instruments remain in place.

Colleagues will be aware that we are awaiting the final report from the Joint Committee on Statutory Instruments on the two Northern Ireland instruments. Although we understand that it is unusual to proceed with a debate in such cases, EU exit does create unusual circumstances, and we wish to give this Committee the opportunity fully to debate these instruments. The JCSI has sought clarification on some minor issues in the two instruments, but we do not consider that those affect their validity and we will ensure that they are fixed before the instruments come into effect. However, should the JCSI ultimately raise more fundamental issues, we will revert to this House with these instruments. If that is the case, I will write to Committee members and place a copy of the letter in the Library of the House.

Turning to the instruments themselves, I shall start by providing some background. The three instruments make corrections to several pieces of EU and domestic legislation covering rail safety in Great Britain, and rail safety, train driver and operator licensing, access and management, and cross-border rail workers’ rights in Northern Ireland.

First, the GB rail safety instrument will make technical corrections to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railways (Access to Training Services) Regulations 2006. Those sets of regulations, which transposed EU law, set out, among other things, the requirement to obtain the appropriate safety certificates or authorisations before operating vehicles or managing infrastructure on the railway in Great Britain. This instrument also makes corrections to EU implementing regulations that apply to the whole UK.

Let me turn to the two Northern Ireland instruments. Rail is a transferred matter for Northern Ireland. It has been agreed that, in the absence of a Northern Ireland Executive, the UK Government will be responsible for the necessary Northern Ireland EU exit legislation at Westminster. In preparing the instruments, officials from the Department for Transport have worked closely with their counterparts in the Department for Infrastructure in Northern Ireland.

The Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 will correct deficiencies in the Railways (Safety Management) Regulations (Northern Ireland) 2006, which established the legislative regime for managing railway safety in Northern Ireland. The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 will correct deficiencies in three key pieces of Northern Ireland rail legislation: the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016; the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010; and the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008. Among other things, the first two of those sets of Northern Ireland regulations established a common regulatory regime for licensing and certifying train drivers and operators on the railways. The third set of regulations implemented rules on aspects of the working conditions of rail workers engaged in interoperable cross-border railway services.

The instruments will correct deficiencies in legislation as a result of the UK leaving the EU. The vast majority of the corrections are minor and technical, such as removing the term “Member State”. It is important to emphasise that the GB instrument will preserve the status quo, including the requirements and procedures for obtaining safety certificates and authorisations, as well as requirements for rail operators to establish and maintain common safety management systems. The Government’s highest priority is to maintain safety and a highly effective safety regime—one of the safest in Europe. The regulations are important to secure that regime.

The GB safety regulations will remove certain requirements placed on the Office of Rail and Road to share information with the European Union agencies for railways. However, there will be a power for the Office of Rail and Road to provide certain safety information to EU bodies, so we can continue to contribute to a safer European railway. Safety certificates issued in European economic area member states will continue to be recognised in Great Britain after Brexit. It is the Government’s intention to lay a second instrument that will limit that recognition to a two-year transitional period after exit, or until the relevant certificates expire, whichever is the sooner. That is consistent with previous rail EU exit instruments, which have introduced a similar recognition period for train driver and operator licences. It strikes a balance between allowing for a reasonable transition period and making greater control over the rail safety network possible.

The equivalent regulations for railway safety in Northern Ireland will mirror the GB safety regulations, with the exception that Northern Ireland institutions have no plans to introduce a two-year recognition period for EEA licences and certificates, recognising the greater role of cross-border services in Northern Ireland. Those documents will be recognised indefinitely in Northern Ireland, to make possible the continued recognition of licences and certificates issued in the Republic of Ireland.

As well as making minor changes, such as the removal of references to member states, the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 will preserve the status quo for rail operations in Northern Ireland. In short, that means that operators and train drivers in Northern Ireland will have clarity and confidence about the regime.

It should also be noted that the EU has adopted a regulation that will provide a temporary extension to the validity of authorisations, certificates and licences required to run cross-border services. That contingency is applicable for nine months in the event that the UK leaves the EU without a deal in place, and supplements the extensive efforts already made by Government and rail operators to secure those important services.

The changes made in the regulations are necessary to ensure that the legislation covering railway regulation, including our important, effective rail safety regime, operates correctly when the UK leaves the EU. They provide certainty, clarity and confidence for the rail industry and passengers. I hope that the Committee will agree that those are important. The regulations preserve the status quo.

4.38 pm

Rachael Maskell (York Central) (Lab/Co-op): Thank you, Ms Buck, for chairing the Committee. It is a pleasure to serve under your chairmanship.

I rise to speak to regulations appertaining to exiting the European Union, including two sets relating to Northern Ireland, more than a month after the UK was due to leave the EU. Part 1 of each set of regulations states that they are to come into force on exit day. Why are we still debating them now, so late, when the event in question would have taken place five weeks ago?

Perhaps I may turn first to the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019. When transportation across the borders of Ireland, north and south, has been at the heart of much debate, why have the Government sat on the regulations? Surely they should have noted the importance of the management of the rail system and the fact that it is essential to the flow of passengers and goods across the border, and how vital it is to establish frictionless arrangements.

When it comes to infrastructure, management and access, the provisions of licences and certificates for train drivers, and the issue of working time regulations on what are considered cross-border working arrangements, those are of high importance for the Government, as they are the people of Northern Ireland. After all, the EU has already agreed temporary reciprocal arrangements.

Given that rail safety is such a critical issue for the public, the issuing and recognition of existing licences is important. There is a question whether, without a deal on 30 March this year, trains would simply have had to stop at the border due to train drivers having licences with no stated recognition outside of the UK—hence the regulations being brought forward as a matter of emergency. Does the Minister agree that it is regrettable that the regulations have come to Committee so late?

The regulations will differentiate Northern Ireland from the rest of the UK. Although licences from the EU will continue to be recognised indefinitely in Northern Ireland, elsewhere in the UK they will only be recognised for a period of two years or until they expire, if that is sooner, as highlighted in the explanatory memorandum. That divergence creates a differentiation between the ability of transport workers to cross the border in Ireland and their ability to cross the channel. Although it is highly unlikely that the same drivers would interchange between the channel and Northern Ireland border routes, it is worth highlighting the divergence in approach in the UK, east and west.

The regulations also impact on the ability to share data on train driver licences and certificates with the safety authorities. That is important in maintaining a safe rail service. That shared intelligence is part of the public standards we would expect to be monitored across border. The Labour party believes that issues appertaining to safety should be shared. In future, should the regulations be passed, the sharing of information within the wider EEA will be discretionary. That is not good enough, particularly as we are debating cross-border rail safety. We believe that the watering down of reporting makes it harder for the EU and the UK to advance rail safety. It is when we co-operate that we are safest.

We have no issue with part 4 of the regulations, on the changes made to the term “interoperable cross-border rail services”.

[*Rachael Maskell*]

I move now to the two statutory instruments on health and safety, and I will discuss the regulations for Northern Ireland and for the wider UK together. The regulations bring technical corrections to various regulations from 2006. They also address 2019 changes that are due to be brought in by member states, with effect from next month, with an extension of up to a year to do so. What work has already commenced in the UK on the rail safety directive? How does the Minister believe that it will enhance the UK's safety record on our railways? Although we can be pleased with the progress made on rail safety, the UK cannot be complacent—that is an important point to stress—and if there are no enhancements to be made, we should be worried.

Clearly, in leaving the EU there will be the disadvantage of not engaging with joint EU learning on improving rail safety. For me, the loss of co-operation on such matters and the sharing of data, intelligence and accountability is one of the greatest detriments of leaving the EU, not least when it comes to improving safety opportunities.

In the light that we recognise the continuum of service across the border in Ireland, north and south, and on the channel route, will the Minister explain how she will maintain a continuous process of safety across the border? That seems particularly important, as a number of operators cross the borders between the UK and EU, including Eurostar, GB Railfreight, DB Cargo and Northern Ireland Railways. If an incident occurred on a cross-border service, that would have implications for the jurisdictions either side of the border. How would it be dealt with? Although contingency measures extend to nine months after the UK leaves the EU without a deal, should that scenario arise, what would happen after that time period?

I note that the regulations seek to recognise the specific issues that arise as a result of cross-border services. For instance, part A safety certificates issued by EEA member states will continue to be recognised as valid. The 2019 directive calls for a unified approach in establishing a baseline across the EU for certifications, methods of monitoring, risk evaluation and assessment, and maintenance of standards and targets. Clearly, leaving the EU without a deal would be disastrous for such matters, so it is essential that we maintain cross-border arrangements to ensure that certification and breaches, not least in the maintenance of standards, are handled by the relevant authority. Furthermore, the UK should continue to work with EU countries to maximise safety opportunities, the sharing of data, the raising of standards and the tightening of regimes across the network in the UK and Northern Ireland.

Despite the Government's commitment to advance safety, it is disappointing that there is not a commitment in these regulations to map across the long-term progress of safety frameworks with the EU, and thus to maximise the opportunity for advancing safety. Proposed schedule 10 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 refers to outsourcing the maintenance function, or parts of it, but not the management of maintenance. The Labour party believes that the fragmentation of outsourcing across the rail service creates risk, and therefore we cannot support that approach.

Part 4 of that schedule determines how maintenance will be managed. Our first concern is that it enables each managing entity to establish its own plan and procedures, in line with an organisation's own approach to safety targets. The organisation must then ensure that appropriate levels of resourcing to fulfil the task are made available. It must determine its own approach to risk assessment and deal with the consequences of that. It must determine that the calibration of testing equipment is accurate and that software is maintained and staff appropriately trained. It is responsible for the decisions it makes and the components required. That cannot be in the interest of safety, as best practice should be the determinant.

The monitoring function should be independent, but it will be internalised within the management structure. We therefore argue that it must also be subject to external audit or moderation. We must not just depend on an internal process to ensure that standards are maintained and that information is drawn out of any inspection and shared. We worry that self-audit, self-determination of training and competency, and self-assessment of physical and mental ability could lead to some organisations cutting corners on safety. According to proposed schedule 11, the issue will be dealt with through data collection rather than an inspection process, but that is a retrospective approach—it is not proactive—to ensuring the safest regime possible. It is disappointing that the Government do not want to advance rail safety and are complacent on the issue. They are not ensuring that we produce best practice, not just in the UK but across the EU.

4.48 pm

Ms Ghani: I thank the Committee for its consideration of the regulations, which will ensure that rail operations in the UK can continue as they do now, providing certainty, clarity and confidence to business. I will respond to the points made, but I must put it on the record that the Government's motivation is to ensure that we continue to have one of the safest railways in Europe.

I was asked why this process was not completed sooner. The instruments make technical corrections to a complex and significant body of domestic, secondary and EU-implemented legislation, which has evolved over several years. The GB and Northern Ireland safety regulations refer to each other and must be considered together. That adds a further layer of complexity. The regulations have had to be prepared in tandem to ensure that they work together effectively. To achieve that, it has been necessary to work closely with the Northern Ireland civil service on a provision-by-provision basis, which, as hon. Members will appreciate, has been a considered process and could not have been rushed.

Concerns have been raised given that no deal may have been ruled out, but the default of extending article 50 and not having a deal is no deal. It is absolutely right that we are doing everything we can to provide certainty to the sector, and ensuring that we remove any risk.

The hon. Member for York Central raised a very important and valid point about information sharing, to which I must respond. We expect to continue to share information that might have an impact on rail safety, because it is of mutual interest to the UK and the EU. The UK will retain access to the vast majority of

information on the relevant EU rail documentation, which is publicly available on the European railway agency database of interoperability and safety, or ERADIS, and stored and arranged in each member state. The UK will still be able to request the information and we would not expect EU member states to withhold it, as it is in the interests of all parties, safety authorities and train drivers not to do so. We are absolutely determined to keep up our record on rail safety.

Another question posed was how we can continue to co-operate. We encourage the UK industry to participate in agency working groups where possible. We understand that the Rail Safety and Standards Board is already exploring arrangements for future co-operation. The Government are fully committed to maintaining high standards on our railways, and leaving the agency will not reduce standards. We are proud of our excellent safety record, which is one of the strongest in Europe.

Some very important points were raised on cross-border services. We are entirely committed to supporting the continued success of the tunnel for rail freight and passenger services, and we want to see them grow in the future. The Government have been actively engaging with a range of European counterparts to ensure that arrangements are in place for the continuation of cross-border rail services, both for passengers and for freight, once the UK leaves the EU. Those discussions have been constructive and productive, and include consideration of arrangements that would be needed following any implementation period, as well as preparations in the event of a no deal. We are fully confident that these arrangements can be agreed, as it is in the mutual interest of the UK and other countries involved to maintain the continued smooth operation of the services.

Very important points were raised about the island of Ireland. With support from DFT officials, the Northern Ireland civil service has been working to ensure that arrangements are in place to ensure the continued smooth function of the Enterprise service. The necessary arrangements are in place to ensure that the cross-border service continues as now from exit day, once again maintaining standards. I want to put on the record that we have one of the safest railways in Europe, and these SIs are about maintaining the status quo. Given the importance we already attach to railway safety, it is in no way appropriate to assume that we would ever add any risk to it once we are out of the EU.

In the event of a no deal, we would become a third country. We expect to continue to share information and to have strong working relationships and standards.

Rachael Maskell: I thank the Minister for responding to my questions. Could she confirm that the Government do not intend to diverge from the standards set across the European Union, particularly in the light of the 2019 directive and the regulations that could result from it?

Ms Ghani: We have to adopt the EU regulations that are in place now. Given that we have such a high record, there is no doubt that our experiences are shared with Europe. Throughout the transitional period, we will have to pick up legislation. We are talking about reciprocating what is already in place in case of a no-deal situation.

A very important point was raised on co-operation and consultation. The consultation took place, and workshops were attended by passengers, freight operators, leasing companies, certification bodies, the Rail Industry Association, the Rail Delivery Group and the Private Wagon Federation, among other organisations. Everybody is keen for us to have that legislation on our statute books. The ASLEF union was invited to our stakeholder workshops; I understand that it did not attend, but it has good engagement with the Department. All have acknowledged that they want clarity, and they want these SIs delivered.

I hope I have responded to all the points. If not, I will write to hon. Lady in detail. I commend these regulations to the Committee.

Question put and agreed to.

RAILWAYS (SAFETY MANAGEMENT) (AMENDMENT) (EU EXIT) REGULATIONS (NORTHERN IRELAND) 2019

Resolved,

That the Committee has considered the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019, No. 825).—(*Ms Ghani.*)

RAIL SAFETY (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Resolved,

That the Committee has considered the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019, No. 837).—(*Ms Ghani.*)

4.54 pm

Committee rose.

