EXPLANATORY MEMORANDUM TO

THE COMMON RULES FOR ACCESS TO THE INTERNATIONAL MARKET FOR COACH AND BUS SERVICES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The European Union (Withdrawal) Act 2018 will convert the text of directly applicable EU legislation into domestic instruments. This instrument amends the retained direct EU legislation Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services ("Regulation 1073/2009"), and associated domestic implementing legislation, to deal with deficiencies which would otherwise exist once the UK leaves the EU. It provides for the existing legal regime concerning the rights of bus and coach operators from the EU to operate in the UK to continue to function in a similar manner after exit day. This is to minimise any potential disruption in services for passengers in a no-deal scenario.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation 1073/2009 provides reciprocal liberalised market access for regular (scheduled) and occasional (non-scheduled, e.g. holiday and tour) coach services between the UK and the European Union. The Regulation establishes the conditions for the international carriage of passengers by coach and bus within the EU, and within Member States by non-resident EU operators (cabotage). It also establishes for this purpose a system of Community Licences, which act as the international bus and coach licences used within the EU, and for these Licences to be issued by the competent authorities of Member States.

Why is it being changed?

2.3 The proposed changes are designed to allow the UK to continue to provide the same levels of access to the UK market to EU bus and coach operators should the UK leave the EU without a deal. The Government has taken separate action to provide international access rights for UK bus and coach operators (described further in paragraphs 7.3 to 7.5). Ensuring that EU operators can continue to bring passengers to the UK will minimise any potential disruption for passengers. Permitting access to all EU operators is a condition of a legislative proposal that will ensure continued access to the EU for UK operators of regular services.

2.4 References in the retained Regulation 1073/2009 to its application in EU Member States will, if not amended, cause the access to the UK transport market permitted by the Regulation to cease to have effect once the UK leaves the EU. Similar references in domestic legislation also need amendment.

What will it now do?

2.5 The changes are to adjust language and references to recognise that the UK is no longer a Member State, to maintain in a no-deal scenario the current access rights for EU bus and coach operators into and within the UK in a similar manner after exit day. The Community Licences of EU operators will be recognised as valid for the same services as they are now. However, EU operators who wish to obtain a new authorisation for a regular (scheduled) coach service into the UK will need to apply for that authorisation from the competent authority in the UK instead of in their home Member State, since the current system of liaison between Member State authorising bodies will no longer apply to the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting before the European Statutory Instruments Committee ("ESIC") and the Lords Secondary Legislation Scrutiny Committee (Sub-Committee B) ("SLSC") on 4th February 2019. The sifting period ended on the 20th February 2019.

3.2 The ESCI agreed on the 12 February 2019 that the instrument could proceed under the negative procedure.

3.3 However, the SLSC recommended that the instrument be upgraded to the affirmative procedure.

3.4 In the Seventeenth Report of Session 2017-2019 published on 21st February 2019, the SLSC said that:

Given the potential impact on coach services, particularly in Northern Ireland, the House may wish to debate this instrument. The House may wish to press the Minister, in particular, on why there will be a two-day period between the UK exiting the EU and the Interbus Agreement entering into force (during which UK-operated occasional services will not be able to operate in the EU), and also on what the impact will be on "regular" and "special regular" services, and on cabotage services since Interbus does not provide for these. The Committee therefore recommends that this proposed negative instrument be upgraded to the affirmative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.5 None.

4. Extent and Territorial Application

4.1 Regulations 2 and 3 extend to England and Wales and Scotland only. Regulations 4 to 8 extend to the United Kingdom.

4.2 It follows that regulations 2 and 3 apply to England and Wales and Scotland only, and that regulations 4 to 8 apply to the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani has made the following statement regarding Human Rights:

5.2 'In my view the provisions of the Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.'

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 8 of (and paragraph 21 of Schedule 7 to) the European Union (Withdrawal) Act 2018.

6.2 The 2018 Act repeals the European Communities Act 1972, but section 2 saves EU-derived domestic legislation, and section 3 saves direct EU legislation (including EU Regulations), so that they continue to have effect in domestic law on and after exit day.

6.3 Section 3 of the 2018 Act will therefore preserve Regulation 1073/2009 in domestic law, and section 2 will preserve implementing domestic legislation, including the Public Passenger Vehicles Act 1981 and the Road Transport (International Passenger Services) Regulations 2018 (SI 2019/1395).

6.4 The retained law contains language which restricts the application of all or parts of the law only to bus and coach services in Member States (and therefore not the UK once the UK has left the EU). The 2018 Act also contains powers to make secondary legislation to enable Ministers to correct deficiencies, such as those just described, in retained EU law. This instrument therefore corrects deficiencies in the retained EU law pursuant to the powers in the 2018 Act.

6.5 In addition to substantive amendments to Regulation 1073/2009, the instrument amends five other pieces of legislation, primarily making minor, technical changes to reflect the fact that the UK will cease to be an EU Member State and ensure that domestic enforcement provisions may continue to be applied to EU operators.

6.6 The domestic legislation amended by this instrument are the Public Passenger Vehicles Act 1981, which regulates public service vehicles, including the functions of traffic commissioners who issue public service vehicle operator's licences and the Road Transport (International Passenger Services) Regulations 2018, which implement aspects of Regulation 1073/2009 and the Interbus Agreement.

6.7 The retained direct EU legislation amended also includes Regulation (EEC) 56/83, which implemented a predecessor to the Interbus Agreement ("the ASOR Agreement") and Regulation 361/2014, which implements the documentary aspects of Regulation 1073/2009. The majority of the amendments are to Regulation 1073/2009, which sets out the common rules for access to the international market for coach and bus services, providing for regular, special regular and occasional services. Regular services are scheduled international coach services open to any member of the public to book; special regular services are regular services for specific categories of people (e.g. cross-border school buses); and occasional services are broadly coach holidays and tours. Regulation 1073/2009 also provides that limited cabotage may be carried out by an operator from one EU Member State within another (e.g. as part of a longer international regular journey), and establishes and sets requirements for the Community Licence, which must be held by EU bus and coach operators in order to undertake any international journey within the EU. It also establishes authorised

inspection officers, conferring on them the powers to ensure that regulations and safety standards are met.

6.8 Regulation 1073/2009 is one of the three main EU Regulations which regulate EU road passenger travel. The other two are Regulation 1071/2009, which prescribes the conditions for access to the professions of both road passenger and road haulage operator, and Regulation 361/2014, which prescribes the formats of relevant documents for passenger transport, including the form of application for authorisation of regular services, the form of authorisation and control documents such as journey forms for occasional services. Inoperabilities in the retained Regulation 1071/2009, in respect of both haulage and passenger transport will be amended by a separate instrument that is expected to be laid for sifting at the same time as this instrument.

6.9 Two EU multilateral treaties with third countries facilitate occasional journeys between the EU and third countries. These are the 1982 ASOR Agreement, which the UK is unable to accede to after exiting the EU, as it does not provide for future accession by third countries, and the 2001 Interbus Agreement.

6.10 The Government has taken action for the UK to accede to the Interbus Agreement in its own right, which is discussed further in paragraphs 7.4 to 7.6. However, as it currently stands, Interbus only applies to occasional services. Once the Interbus Agreement is extended to regular services, which it is expected to, it will render obsolete the amendments now proposed to Regulation 1073/2009. These regulations are a temporary stop-gap measure, designed only to provide EU operators with continuing access to the UK market after exit day prior to the UK acceding to the Interbus Agreement and that Agreement being extended to regular services.

6.11 The instrument also revokes four EU Decisions, as they serve no continuing purpose; and amends another Decision which will only continue to be relevant in part. These Decisions relate to the introduction and implementation of the ASOR and Interbus agreements.

6.12 Finally, the instrument incorporates into the retained UK versions of Regulations 1073/2009 and 361/2014 provisions of Annex XIII of the EEA Agreement and amend EU Decisions, so far as they are relevant to the Regulation.

7. Policy background

What is being done and why?

7.1 International coach services are an important mode of transport. 1.6 million overseas visitors travel to Great Britain by coach (4% of all visits) and 83% of coach visits to Great Britain are from EU countries. There are an additional 900,000 border crossings between the Republic of Ireland and Northern Ireland. The Government is clear that this should be continued in a similar manner after EU withdrawal.

7.2 This instrument is made in order to allow continuing access by EU bus and coach operators to the UK, allowing EU bus and coach carriers to continue operating in a similar manner after the UK exits the EU. Amending Regulation 1073/2009 in order to retain much of it in British domestic law will allow this to continue in the event of a no-deal exit scenario, and also acts as a contingency plan for any period between exit day and the expansion of the Interbus Agreement to cover regular services.

7.3 The EU have proposed a legislative change that will extend many of the provisions of the existing market access Regulations till 31 December 2019. This proposal is

premised on the UK offering reciprocal access to operators of freight and passenger vehicles from all member States. This instrument will therefore facilitate a reciprocal market access arrangement for UK operators.

7.4 In the event that the Withdrawal Agreement is ratified and comes into force upon exit, the EU's and UK's intention is that during the Implementation Period the UK will continue to be bound by the Interbus Agreement. At the end of that Implementation Period, or in the event of a no-deal, the UK will automatically cease to participate in the Interbus Agreement. Therefore, the UK will need to accede to the Interbus Agreement independently in order to continue participating in it after either of those events. On 12 September 2018, the government laid a Command Paper and Explanatory Memorandum before Parliament on the subject of the Interbus Agreement[1]. The Government deposited the Article of Accession with the EU Commission in their role as secretariat of Interbus on the 30 January 2019.

7.5 Accession to the Interbus Agreement will provide UK bus and coach operators providing occasional services with access to the EU should the UK leave the EU without a deal that provides for mutual road passenger transport access. In that scenario, the rights and obligations of UK and non-UK carriers will be the same but it would not provide for cabotage.

7.6 A signatory process for a protocol that will extend the Interbus Agreement to regular services opened on 16 July 2018 and runs until 16 April 2019, although officials have been informed that this date can be extended. Four contracting parties need to sign the protocol, including the European Community, with the protocol then coming into force in the third month after the fourth signature is made. As of 11 January, no contracting party had signed the protocol so it is unlikely that regular services will be authorised under the Interbus Agreement immediately after exit day. Once the Agreement has been expanded to regular services as well as occasional services and the UK accedes to the Agreement as a third country, a fully reciprocal market access arrangement will be in place and the retained UK version of Regulation 1073/2009 (as amended by these regulations) can be revoked.

7.7 This instrument is therefore needed in order to provide in particular regular and special regular international coach travel access for EU bus and coach operators to the UK, to allow such services to continue in much the same manner as before, in the interests of passengers, until such time as fully reciprocal arrangements are in place. Pending UK accession to an expanded Interbus Agreement, the Government is also seeking to put in place interim bilateral agreements with individual states at the earliest opportunity to provide bus and coach access to the EU; however, the timing for this cannot be guaranteed.

7.8 The instrument has the effect that EU operators who wish to run a new regular service between the UK and an EU Member State (or who wish to renew an existing authorisation that has expired) must apply for an authorisation from the UK – this would replace the authorisation they would currently receive through their home Member State authority, but the process for the application and the criteria against which it will be assessed are not changed. The instrument further recognises EU Community Licences and occasional service control documents issued by the

[1] https://www.gov.uk/government/publications/ms-no92018-interbus-agreement-with-protocol-and-decision

competent authorities of each Member State and ensures that the powers of authorised officers to inspect foreign vehicles and their paperwork are retained.

7.9 By virtue of paragraph 37 of Schedule 8 to the European Union (Withdrawal) Act 2018, existing authorisations and control documents issued to non-resident EU operators prior to exit day will continue to be valid until their stated expiry date, thereby further reducing disruption to non-resident EU operators.

7.10 Access rights for bus and coach operators are a transferred matter for Northern Ireland under Section 4 of the Northern Ireland Act 1998. As such, this instrument will not amend the Northern Irish domestic legislation, which will be done in a separate exercise.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of (and paragraph 21 of Schedule 7 to) the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by these Regulations.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument makes technical amendments to an existing regime to maintain the status quo as far as possible.

10.2 Officials in the Northern Ireland Department for Infrastructure have been kept informed in respect of the amendments proposed to be made to the retained EU legislation.

11. Guidance

11.1 The instrument will not be accompanied by formal guidance as there is unlikely to be any immediate need for current arrangements to change in respect of existing services by EU operators. However, the Department for Transport will publish content on Gov.uk, which will detail to EU bus and coach operators any steps which they will need to take in order to make full use of the continued market access arrangements to the UK.

12. Impact

12.1 The impact on business, charities or voluntary bodies is increased costs for EU operators if they need to obtain authorisations for new services, as they will have to apply to the International Road Freight Office. We estimate that there are approximately 150 EU operators who will have to apply for an authorisation if they wish to remain authorised once their current authorisations expire. Current authorisations last for five years. The costs include additional postage costs and translation fees. These are not likely to be significant and have not been monetised.

12.2 The impact on the public sector is increased costs to the International Road Freight Office (IRFO.) This new legislation will require the IRFO to accept and process applications for new authorisations to run regular (i.e. scheduled) services to the UK from EU coach operators directly. Previously, authorisations for regular services were accepted from competent authorities in EU member states. This will require marginal additional resource to be committed by the International Road Freight Office, however we do not expect this to be a significant increase in their workload.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the SI relates to maintenance of existing access arrangements for EU operators, and so the impact on UK small businesses is therefore zero or nominal.

14. Monitoring & review

14.1 There are no plans to review or monitor this SI as it provides for the maintenance of existing access arrangements for EU operators.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Laura Teale at the Department for Transport, telephone: 07771 982983 or email: Laura.Teale@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Catriona Henderson, Deputy Director for Buses and Taxis Division at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.

Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny	Paragraph 16, Schedule	Anybody making an SI after	Statement setting out:

statement where amending regulations under 2(2) ECA 1972	8	exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the effect of the instrument is to do no more than is appropriate to substitute a new unilateral UK authorisation process in respect of regular services for the current multilateral EU authorisation process, which will become inoperable after exit day and otherwise maintain domestically the existing regime of rights and obligations for EU operators, relating to the common rules for access to the international market for coach and bus services and to remove any administrative functions (including reporting requirements to the European Commission) which cease to be appropriate once the UK has left the EU.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are given in the policy background section of this explanatory memorandum (paragraph 7.1 to 7.10).

3. Equalities

3.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Nusrat Ghani, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.