EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL ROAD PASSENGER TRANSPORT (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Infrastructure and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 These Regulations are made to address failures of existing bus and coach (passenger) transport legislation in Northern Ireland to operate effectively and other deficiencies which would otherwise result from the withdrawal of the United Kingdom from the European Union.

Explanations

What did any relevant EU law do before exit day?

2.2 EU Regulation 1073/2009 on common rules for access to the international market for coach and bus services ("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. It is given effect in Northern Ireland principally through the Public Service Vehicles (International Passenger Services) Regulations (Northern Ireland) 2019 and the Transport Act (Northern Ireland) 1967.

Why is it being changed?

2.3 The Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019 will amend Regulation 1073/2009 to apply UK wide, 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.

2.4 The provisions of the Public Service Vehicles (International Passenger Services) Regulations (Northern Ireland) 2019 and the Transport Act (Northern Ireland) 1967, which give effect to EU Regulation 1073/2009 in Northern Ireland, are written from the perspective of the UK being an EU Member State and some of the language used or referred to, acknowledges this. This is not consistent with the UK no longer being a Member State and would result in the failure of certain aspects of the NI legislation to operate effectively and other deficiencies including ambiguity. Certain provisions of the Road Passenger Transport (Qualification of Operators) Regulations (Northern

Ireland) 2014 and the Road Traffic (Northern Ireland) Order 1981, which relate to bus and coach (passenger) transport, are also being adjusted for the same reason.

What will it now do?

2.5 The changes to the NI legislation are to adjust language and references to recognise that the UK is no longer a Member State and to so eliminate any failures to operate effectively and other deficiencies including ambiguity in order to maintain in a no-deal scenario the current access rights for EU bus and coach operators into and within Northern Ireland in a similar manner after exit day.

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 11th March 2019. The sifting period ended on the 26th March 2019.

3.2 The ESCI agreed on the 19th March 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 Twenty-Second Report of the Session 2017-2019 published on 28th March 2019, the SLSC said that:

Given the potential impact on cross-border services, the House may wish to have the opportunity to debate this instrument. As such, we recommend that this instrument should be subject 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 The territorial extent and application of this instrument is Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

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 International Road Passenger Transport (Amendment) Northern Ireland (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 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 Transport Act (Northern Ireland) 1967, the Public Service Vehicles (International Passenger Services) Regulations (Northern Ireland) 2019, the Road Traffic (Northern Ireland) Order 1981 and the Road Passenger Transport (Qualifications of Operators) Regulations (Northern Ireland) 2014.

6.4 The Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019 will amend the retained UK version of Regulation 1073/2009, to apply UK wide. 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.

6.5 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 the Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019. Inoperabilities in the retained Regulation 361/2014 will be amended by the Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019.

6.6 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 makes consequential amendments to four pieces of domestic Northern Ireland 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.

6.7 The Northern Ireland domestic legislation amended by this instrument are the Transport Act (Northern Ireland) 1967; the Public Service Vehicles (International Passenger Services) Regulations (Northern Ireland) 2019, which implement aspects of Regulation 1073/2009 and the agreement on the international occasional carriage of passengers by coach and bus ("the Interbus Agreement"); and the Road Passenger Transport (Qualifications of Operators) Regulations (Northern Ireland) 2014, which implement aspects of Regulation 1071/2009; and the Road Traffic (Northern Ireland) Order 1981.

7. Policy background

What is being done and why?

7.1 This instrument applies to the access rights of bus and coach operators which is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where the UK Government want devolved Ministers to take the necessary actions to prepare

Northern Ireland for exit. The UK Government have been considering how to ensure a functioning statute book across the UK, including in Northern Ireland, for exit day in the absence of a Northern Ireland Executive. With exit day imminent, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. It has been decided, therefore, that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

7.2 The Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019, will amend Regulation 1073/2009 to apply UK wide, 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 similar manner after the UK exits the EU. The amendments to be made by those Regulations will address the risk that, in the absence of a withdrawal agreement, EU rules that facilitate access to the UK market by EU carriers will no longer be operable. This will be a consequence of the UK becoming a third country on exit day.

7.3 The UK completed the formal accession process to the Interbus Agreement at the end of March, and will accede to the Interbus agreement as an independent contracting party in the event that the UK leaves the EU without a deal. The Interbus Agreement is a multilateral agreement between the EU and seven other contracting parties in eastern Europe, which currently allows liberalised occasional (ie. tours, trips) international coach travel between those parties. The Interbus Agreement is currently being expanded to cover regular and special regular services, however, it is unlikely that this will be in place for immediately after exit day. Therefore, the UK SI also acts as a contingency plan for any period between exit day and the expansion of the Interbus Agreement to cover regular services. The EU have agreed a legislative measure that will allow UK operators currently running regular and special regular services to the EU to continue doing so until 31 December 2019.

7.4 The intention of this SI is to make consequential amendments to the Public Service Vehicles (International Passenger Services) Regulations (Northern Ireland) 2019 which give effect to EU Regulation 1073/2009 and the Interbus Agreement as well as provisions within the Transport Act (Northern Ireland) 1967, the Road Traffic (Northern Ireland) Order 1981 and Road Passenger Transport (Qualifications of Operators) Regulations (Northern Ireland) 2014 to ensure they remain operable following withdrawal from the EU. The amendments to these four pieces of domestic legislation 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, replicating relevant provisions in the corresponding UK SI.

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 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.

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. Existing forms and published information will, however, be amended to reflect the changes, e.g. removing references to the UK being an EU Member State.

12. Impact

12.1 The impact on business, charities or voluntary bodies is not considered to be significant.

12.2 The impact on the public sector is not considered to be significant.

12.3 An Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

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 Claire Cockerill at the Department for Infrastructure (telephone 028 9054 0098) or email claire.cockerill@infrastructure-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tom Reid at the Department for Infrastructure 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
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 statement where amending regulations under 2(2) ECA 1972	Paragraph 16, 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 setting out: 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 International Road Passenger Transport (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the effect of the instrument is limited in effect to simply correcting deficiencies in the legislation relating to access to the international market for coach and bus services resulting from the UK leaving the EU and ensuring that domestic enforcement provisions may continue to be applied to EU operators.

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 primarily to correct the language in key Northern Ireland legislation relating to access to the international market for coach and bus services to recognise that the UK is no longer an EU member State, and to so eliminate any ambiguity, but otherwise the current regime concerning the rights of bus and coach operators remains intact in Northern Ireland.

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. This Act does not extend to Northern Ireland but as the International Road Passenger Transport (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 in relation to Northern Ireland."

4. Explanations

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