

EXPLANATORY MEMORANDUM TO
THE RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT
(AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 141

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 (EU) No 181/2011 concerning the rights of passengers in bus and coach transport, and associated domestic implementing regulations, to deal with deficiencies which would otherwise exist once the UK leaves the EU. It provides for the existing legal regime concerning bus and coach passenger rights (such as accessibility, and compensation for delays or cancellations) to continue to operate in substantially the same manner after as before exit day.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Regulation (EU) No 181/2011 provides a range of rights for passengers using bus and coach transport. These include rights in respect of delays, cancellations and accidents, and the accessibility of services for disabled passengers and passengers with reduced mobility. All the provisions of the Regulation apply to regular services of 250km or longer, though any such domestic regular services in the UK are exempt until 2021. A limited number of provisions also apply to regular services shorter than 250km, and to occasional services (for example, coach holidays and tours).

Why is it being changed?

- 2.3 The proposed changes are designed to ensure that the existing regime of bus and coach passenger rights remains effective after EU withdrawal. The Government does not wish to see a reduction in passenger rights as a result of leaving the EU, and it is possible that the UK will need to continue to apply the existing regime to enable continued international coach travel between the UK and the EU. References in the retained Regulation (EU) No 181/2011 to its application in EU Member States will, if not amended, cause the rights conferred by the Regulation to cease to have effect once the UK leaves the EU. Two sets of domestic regulations which transpose elements of the EU Regulation also require similar amendment. In one set of regulations applicable to Great Britain, this is to ensure that the exemptions from the provisions of the Regulation in respect of international regular services which have a significant part of their route outside the EU, will continue to function correctly until those exemptions expire in 2021. In one set of regulations applicable to Northern Ireland, the amendment is to ensure that the designated body responsible for enforcement of

Regulation (EU) No 181/2011 remains correctly designated after the UK has left the EU.

What will it now do?

- 2.4 The changes are to adjust language and references to recognise that the UK is no longer a Member State, to maintain the application of the current bus and coach passenger rights regime in the UK in substantially the same manner after as before 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 for sifting on 19 November 2018. It was considered by the Secondary Legislation Scrutiny Committee on 3 December 2018 and by the European Statutory Instruments Committee on 4 December 2018. The Sifting Committees both agreed that the instrument should proceed by way of the negative resolution procedure. The Minister has considered the decision of the Sifting Committees and has approved and signed the instrument.

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)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 Regulation 2 extends to England and Wales and Scotland only and regulation 3 extends to Northern Ireland only. Regulation 4 extends to the United Kingdom.
- 4.2 It follows that regulation 2 applies to England and Wales and Scotland only and regulation 3 applies to Northern Ireland only. Regulation 4 applies to the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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 (EU) 181/2011 in domestic law, and section 2 will preserve implementing regulations including The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013 (SI 2018/1865) and The Bus and Coach Passenger Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2014 (SR 2014/180).

6.4 However, each of those pieces of 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 we have 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 law pursuant to the powers in the 2018 Act.

7. Policy background

What is being done and why?

- 7.1 This instrument is made in order that the UK will continue to operate the current system of rights for passengers on bus and coach transport after it leaves the EU.
- 7.2 Regulation 181/2011 sets out the responsibilities of industry participants, including carriers, tour operators and terminal managing bodies, in the case of delays, cancellations, accidents and other issues affecting passengers, including disabled passengers and passengers with reduced mobility.
- 7.3 The rights and obligations detailed by the Regulation, to give a non-exhaustive list of examples, cover matters such as financial compensation for delays or loss of luggage, non-discriminatory access conditions, rights to assistance for disabled passengers, and a requirement for drivers of regular (scheduled) bus and coach services to undertake disability awareness training. Different rights and obligations attach to different types of service (regular services over 250km in length, all regular services, or occasional services like coach holidays and tours), and there also are overlaps with a range of domestic legislation, such as the Equality Act 2010 where accessibility is concerned. Domestic legislation, however, does not replicate the EU rights and obligations in full; for example, the requirement for drivers of regular services to undertake disability awareness training (Article 16 of the Regulation) would fall away after the UK leaves the EU if this instrument was not laid.
- 7.4 The Government has been clear that it will protect consumer rights when we leave the EU. This instrument meets that commitment in respect of bus and coach passenger rights.
- 7.5 It is possible that the continued provision of these rights will be required to facilitate future international coach travel between the UK and the EU. On 12 September 2018, the government laid a command paper and explanatory memorandum before Parliament on the subject of the Interbus Agreement. This is a multilateral agreement between the EU and seven other contracting parties in eastern Europe, which currently allows liberalised occasional international coach travel between those parties. The UK currently participates in the Interbus Agreement by virtue of being an EU Member State. 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 by virtue of the terms of the Withdrawal Agreement. In the event of a "No Deal" or, in the event of agreement, at the end of the implementation period, 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.
- 7.6 The Interbus Agreement requires specified EU technical and social standards to be adhered to in respect of journeys under the agreement; the Joint Committee which manages the Interbus Agreement is in the process of updating the standards required,

and it is expected that they will include relevant elements of Regulation 181/2011. Accessing to the Interbus Agreement in a No Deal scenario would be a contingency option for coach travel between the UK and the EU in the event that the UK withdrew from the EU without a negotiated arrangement that provided for international coach travel. In that scenario, the obligations placed by the Interbus Agreement on UK and non-UK carriers would be the same.

- 7.7 The primary effect of the instrument is to remove or amend references to “Member State(s)” so that the associated passenger rights, and obligations on bus and coach operators, will continue to apply on and after exit day.
- 7.8 The instrument also amends specified currency values in Euro (where compensation thresholds are set) to Pounds Sterling, and removes any obligations on UK authorities or nominated bodies to make reports to the European Commission or to co-operate with equivalent bodies in EU Member States. The amendments made by the instrument are limited to making the retained law function correctly within the UK; they do not address any matter (such as co-operation with other Member States) which can only be addressed as part of a negotiated outcome.
- 7.9 This instrument applies to the rights of passengers using bus and coach transport which are a transferred matter for Northern Ireland under Section 4 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 we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided 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.

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 minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged.
- 10.2 The Department for Transport has consulted with the Northern Ireland Department for Infrastructure before making required changes to Northern Ireland domestic legislation.

11. Guidance

- 11.1 The instrument will not be accompanied by published guidance, as it relates to the maintenance of existing regulatory standards. The Department for Transport will engage with the complaint-handling and regulatory bodies which enforce the rights granted by Regulation 181/2011 to answer any queries that may arise.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 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 regulatory standards, and the impact is therefore zero or nominal.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Department for Transport will monitor its application, through engagement with the nominated complaint handling and enforcement bodies, to assure that it continues to enable the desired policy outcome (that is, maintenance of current bus and coach passenger rights).
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Chris Brown at the Department for Transport, telephone: 07825203823 or email: chris.brown@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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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. Sifting statement(s)

- 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 Rights of Passengers in Bus and Coach Transport (Amendment etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because:

- (a) the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure, and;
- (b) the effect of the instrument is to maintain domestically the existing regime of rights and obligations relating to carriage of passengers on bus and coach transport, by ensuring that the language of retained EU law is amended to enable it to apply in the UK once the UK is no longer an EU Member State. No substantive changes are otherwise made.

2. Appropriateness statement

- 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 the Rights of Passengers in Bus and Coach Transport (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because the effect of the instrument is to do no more than required to maintain domestically the existing regime of rights and obligations relating to carriage of passengers on bus and coach transport, 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. No substantive changes are made.

3. Good reasons

- 3.1 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”.

- 3.2 These are given in the policy background section of this explanatory memorandum (paragraph 7.1 to 7.9).

4. Equalities

4.1 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.

4.2 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”.

4.3 The instrument ensures that the current regime of passenger rights in bus and coach transport, many of which relate to accessibility and the assistance which should be provided to disabled people and those with reduced mobility, will continue to be applied in the UK once the UK has left the EU. The instrument fully preserves those rights.

5. Explanations

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