EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION


ADD 1 COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services


Submitted by the Department for Transport 20 December 2017

SUBJECT MATTER

1. The first phase of the European Commission's Mobility Package was published in May 2017 and focussed on road transport\(^1\). On 8 November 2017 the Commission published the second phase of its Mobility Package; Collectively the Commission refers to this second phase as the 'Clean Mobility Package'. It consists of:

- A Communication titled "Delivering on low-emission mobility A European Union that protects the planet, empowers its consumers and defends its industry and workers",
- A Communication titled "Towards the broadest use of alternative fuels - an Action Plan on Alternative Fuels Infrastructure",
- Four legislative initiatives.

2. The documents included in the second phase of the 'Mobility Package' are the subject of six Explanatory Memoranda (EMs): a list of these and the documents they cover is at Annex A.

3. This EM covers the proposal to amend Regulation No (EC) 1073/2009 which lays down rules for international passenger travel by bus and coach. The Regulation also classifies the different categories of operation which are:

- 'Regular services', which are open to all and where passengers are carried at separate fares along a defined route at set times,
- 'Special regular services', which are only open to a particular group e.g. students at a school or workers at a company,
- 'Occasional services', where the vehicle is for private hires (the most usual type of international bus and coach travel).

4. Regulation (EC) 1073/2009 currently defines the meaning of cabotage, which allows an operator to carry out commercial work within another Member State other than the one in which they are established. It also establishes an

\(^1\) EMs: 9967/17 & 10103/17 on the Communication; 9668/17 & 9669/17 on the Market Pillar; 9670/17 & 9671/17 on the Social Pillar; and 9672/17, 9673/17 and 10175/17 on the Charging Pillar.
authorisation process for regular international coach journeys, requiring the competent authorities in any Member State where passengers may be picked up or set down to effectively give permission for that service to operate. The Regulation also prescribes the format of the documents that must be carried on international occasional journeys.

5. The Commission's proposal is accompanied by an ex-post evaluation of the existing Regulation, an Impact Assessment, and an Impact Assessment summary. The Commission carried out the ex-post evaluation between 2015 and 2017, and concluded that the Regulation has contributed to establishing a more coherent framework for international services.

6. However, the evaluation also identified that there are significant problems with the inter-urban market across the EU, specifically identifying barriers to entry caused by the variation in the different authorisation processes across Member States. The evaluation noted that operators were not given fair and appropriate access to bus / coach terminals and that this also limited growth of the market.

7. The obstacles for new entrants into the inter-urban passenger market mean that the modal share of the coach market has not performed well in comparison to growth in other modes - particularly private cars. This, in turn, has adverse consequences for vehicle emissions and road safety.

8. The evaluation stated that the development of an integrated inter-urban coach market would improve access in areas that are isolated or have low population density, and would help disadvantaged individuals gain access to economic and social opportunities. The evaluation further identified that there were significant environmental and safety benefits that could be gained through a more integrated inter-urban coach network across the Union.

9. In summary, the evaluation and the impact assessment concluded:

- The range of restrictions on access to national markets limits competition between operators and against other modes.
- The patchwork of regulatory requirements for national bus services across the Union inhibits operators in providing a wider range of international services.
- The administrative burden of registering national services discourages smaller companies (SMEs) from operating in other Member States.
- Freedom to provide services in other Member States would lead to a more comprehensive and integrated market.
- Discriminatory access to passenger terminals prohibits operators from providing services and offering better levels of integrated and accessible transport.
- The requirement to carry a journey form on international occasional services is an avoidable administrative burden.
- The underperformance of the market could not be addressed at a national level and therefore required concerted action at EU level.
10. The Commission therefore propose to amend Regulation (EC) No 1073/2009 to address these issues. The proposal would:

- Redefine the meaning of cabotage, in particular removing the element of it being ‘temporary’.
- Allow operators to provide national services in another Member State.
- Define what a coach terminal is, and set out the basis for non-discriminatory access to terminals.
- Require Member States to set up a national regulatory body to ensure access to terminals and to decide on whether any public service contracts are jeopardised by the provision of any service where passengers are carried less than 100km.
- Abolish the requirement for a journey form on international occasional journeys.

11. The Commission has set out the proposed grounds on which a national authority could refuse an application for international or national services. The possible justifications for refusing such authorisations relate to whether the operator has sufficient resources, whether the operator has failed to provide services properly in the past, or whether the operator has failed to observe important aspects of transport regulation. Where passengers are carried less than 100km on a national service the regulatory body could also refuse the authorisation on the grounds that the service undermines the economic equilibrium of a Public Service Obligation (PSO).

12. A related Regulation (EC) 1071/2009 lays down four requirements for access to the occupation of road transport operator: that they have an “effective and stable establishment”; that they be of “good repute”; that they have an “appropriate financial standing”; and that they have the “requisite professional competence”. The possession of a Community licence provided for in Article 4 of the Regulation allows that operator to operate international services and permitted cabotage across the territory of the EU.

13. The requirement to have an “effective and stable establishment” applies only to the home state of that operator. The possession of a Community licence allows the operator to provide permanent services in another Member State without having any place of establishment there.

14. Overall, the Commission’s proposal and supporting documents form a narrative that the national inter-urban market is fragmented and has not performed to its potential, and that the solution is to apply common rules to domestic markets to complete the single market in road passenger transport.

SCRUTINITY HISTORY

15. The proposals that resulted in Regulation (EC) No 1073/2009 were the subject of EM 10092/07, 10102/07, 10114/07, 10117/07, 10119/07,
10125/07. The House of Commons European Scrutiny Committee considered the EM on 4 July 2007. The Committee recommended that the documents were legally and politically important and did not clear them (Report 28, Session 2006/2007, 28665, 28666, and 28667). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1293rd sift on 3 July 2007. The Chairman wrote to the Minister on 18 July 2007 holding document 10114/07 under scrutiny.

16. Ministerial letters were sent to the Committees, dated 15 and 28 May 2008, and the documents were cleared from scrutiny by the Lords Select Committee on the European Union on 2 June 2008, and by the European Scrutiny Committee on 4 June 2008 (Report 26, Session 2007-2008). Further letters reporting on the negotiations were sent to the Committees on 26 June 2009 to inform them of the final outcome of the negotiations.

17. A Commission Report on the implementation of certain provisions of Regulation (EC) No 1071/2009 was the subject of EM 13653/14 & 13653/14 ADD 1. The House of Commons European Scrutiny Committee considered the EM on 22 October 2014. The Committee recommended that the document was not legally or politically important and cleared it (Report 15, Session 2014-15, 36363). The House of Lords Select Committee on the European Union cleared the EM at the 1559th sift on 13 October 2014.

MINISTERIAL RESPONSIBILITY
18. The Secretary of State for Transport.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

19. Passenger transport is a devolved matter in Northern Ireland where different legal and administrative arrangements apply. The licensing and regulatory functions are exercised through a Ministerial Department of the Northern Ireland Assembly. The administration in Northern Ireland has expressed an interest in the proposal as it is the DfT and FCO that negotiates with the EU on behalf of Northern Ireland and Gibraltar on international passenger services.

20. The Devolved Administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

21.
   i) Legal basis
      Article 91(1) of the Treaty on the Functioning of the European Union
   
   ii) European Parliament Procedure
        Ordinary Legislative Procedure
iii) Voting Procedure
Qualified Majority Voting

iv) Impact on United Kingdom Law
There will be a requirement to modify both primary legislation and secondary legislation, principally, section 12 of the Public Passenger Vehicles Act 1981 (to allow operation of Public Service Vehicles other than under a UK PSV operator's licence), and relevant provisions of the Transport Act 1985, the Greater London Authority Act 1999, the Transport Act 2000 (as amended by the Bus Services Act 2017), the Public Service Vehicles (Community Licenses) Regulations 2011 and the Public Service Vehicles (Registration of Local Services) Regulations 1986.

v) Application to Gibraltar
Under the provisions of the European Communities Act 1972 agreements with the EU apply to the territories of Gibraltar and Northern Ireland.

vi) Fundamental Rights Analysis
No fundamental rights issues arise from the proposal.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

22. The proposal is relevant to the EEA area.

SUBSIDIARITY

23. The Government notes the Commission's assessment that amendments to existing EU rules can only be made at EU level, and agrees that this is the case.

24. The Commission also argues that the patchwork of rules for access to national markets for coach and bus services constrains carriers' ability to develop services into pan-European coach networks and denies them the possibility to offer integration with other coach services and transport modes. They argue that Member States acting alone cannot introduce or ensure the coherence and coordination of uniform market access rules needed for the emergence of a genuine internal market for road passenger transport, and that it is therefore necessary to provide rules at the EU level.

25. The Government agrees that the proposal is consistent with the principle of subsidiarity, given its objective of a genuine internal market for road passenger transport. The Commission have not previously sought to regulate on domestic markets in regular bus services other than setting out common rules for the tendering of public funded contracts. This proposal sets out to liberalise the inter-urban market, both internationally and national. The Commission feel that they are justified in legislating in domestic markets under the basis of 'necessity' as national measures have failed in creating a comprehensive inter-urban network. The Commission also feel that only the EU can provide the legal
basis to ensure fair competition across the Union and legal certainty for operators regarding access to the market and terminals.

26. Transport in general, is a matter of shared competence under Article 5(3) of the Treaty for the Functioning of the European Union (TFEU), and Article 91 (1) b allows the European Parliament and the Council to lay down .."the conditions under which non-resident carriers may operate transport services within a Member State".

POLICY IMPLICATIONS (including Exit implications where appropriate)

27. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

28. The Government is still considering its detailed position on the proposal, but our initial assessment of its implications is set out below. The long term implications of the proposal for the UK will depend on the outcome of exit negotiations (including on any implementation period) and whether these include any negotiated access arrangement or bilateral agreement. The proposal itself does not extend beyond EU and EEA members.

29. Any changes required to align to the EU acquis may relate both to international services and also to access to our domestic market for road transport. It is currently relatively straightforward for an overseas operator to set up a subsidiary in the UK to operate passenger services, and we do not consider the requirements to obtain an operators' licence to be onerous or the fee to be expensive.

30. The bus market in GB is effectively deregulated with the freedom for operators to provide services commercially. Local authorities are able to provide services that are non-commercial or supplement commercial services - possibly in the evenings or Sundays. These services are procured by competitive tender. A different arrangement applies in London where Transport for London (TfL) establish the routes and frequencies to be operated and have operators bid competitively to provide those services.

31. The proposal would require Member States to set up a national regulatory body to ensure access to terminals and to decide on whether any public service contracts are jeopardised by the provision of any new service. In GB the Traffic Commissioners are the regulators of the bus and freight industries and may be able to carry out the proposed additional roles, subject to
supplementary resourcing.

32. GB legislation requires that regular services, where there are separate fares and passengers can be picked up or set down within 15 miles, are registered with a competent authority. In Great Britain the Traffic Commissioners are the competent authorities for this also - although there are plans to change that in areas that may want to apply franchise arrangements under the Bus Services Act 2018.

33. The existing Regulation requires services that are performed by a non-resident carrier under permitted cabotage to be in accordance with national laws on weights and dimensions and facilities for access by vulnerable groups. The UK has been effectively fully liberalised in the longer distance national coach market since 1980, with no requirement to register services that do not have the ability for passengers to travel less than 15 miles. The proposal will require non-resident carriers to have such services authorised.

34. The Government is concerned that the proposed ability of operators to provide national services in a country where they are not ‘established’ may lead to competition in that market by operators with lower costs. As part of the process of granting an operator’s licence in GB the Traffic Commissioners need to be satisfied that the premises allow the number of vehicles authorised on the licence to be parked there. The Driver and Vehicle Standards Agency (DVSA) can also make an assessment on whether the maintenance facilities are suitable to the size and nature of the undertaking. The Government has concerns that the proposal would allow operators established in another Member State to compete in the domestic bus market with UK operators without having to meet the conditions concerning the premises they use in the UK.

35. In addition, the proposal to ensure non-discriminatory access to terminals for non-resident operators would mean that Member States would not be able to protect any arrangement they may have put in place regarding concessions or public obligation contracts for services that can carry passengers over 100 km. The Department is not aware of any such arrangement in the UK.

36. For services where passengers can travel less than 100 km the authorising authority would be able to refuse authorisation if the equilibrium of those public obligation arrangements would be disrupted by a new service, provided that the public authority who set up such arrangements could justify this to the regulatory body.

37. There is also a potential for weakening the oversight provided by the Traffic Commissioners as regulators of the industry through the existing operator licensing system. It may also make enforcement more difficult in the case of non-resident carriers on standards of road safety, environmental protection and driver’s hours as the enforcement agencies of the relevant competent authority will be in another country.
38. The Estonian Presidency has held some initial working group discussions of the proposal, which indicate that other Member States have similar concerns to ours. In addition, the proposal may present problems in EU Member States where the bus market is highly regulated because the legislation would provide a freedom for non-resident operators to provide services that is not currently available to resident operators.

39. We anticipate that the proposal is likely to be significantly amended before it could become EU law. We will continue to work with the Commission and with other Member States to influence the negotiations, however we understand that the forthcoming Bulgarian Presidency does not intend to take the proposal forward during its term.

CONSULTATION

40. No formal consultation is planned on the documents. If there is a requirement to amend national legislation we would consult as part of that procedure.

IMPACT ASSESSMENT

41. The Commission’s Impact Assessment is attach was published with the legislative proposal. The Government has concerns regarding the evidence base, methodology and conclusions of the Impact Assessment that we will address in more detail in due course.

FINANCIAL IMPLICATIONS

42. There are financial implications to the proposals, including some new administrative requirements for operators of bus terminals. The full net costs of the all the elements of the proposal will, in due course, need to be appropriately assessed and estimated.

43. Within the UK the policy there is a requirement for industry to cover the cost of regulating that industry. The costs of establishing any new regulatory body to cover the additional requirements or modifying the existing system would ultimately need to be recovered from operators. There may be an offset against those costs as the proposal does include the removal of the form used for occasional international services.

TIMETABLE

44. The timetable for consideration in the Council of Ministers and the European Parliament is not yet known, however the proposal is not expected to be discussed at the Council of Ministers during the Bulgarian Presidency.
Jesse Norman MP
Parliamentary Under Secretary of State
Department for Transport
### ANNEX A

**FULL LIST OF DOCUMENTS COMPRISING THE SECOND PHASE OF THE MOBILITY PACKAGE**

(6 Explanatory Memoranda)

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<th>EM on overall Communication</th>
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<td>14215/17: Communication from the Commission: Delivering on low-emission mobility A European Union that protects the planet, empowers its consumers and defends its industry and workers</td>
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<td>14184/17 Proposal to amend Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services</td>
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<td>14217/17 Proposed Regulation setting emission performance standards for new passenger cars and for new light commercial vehicles</td>
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