

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4553 of 14 March, 2019

LEGAL NOTICE NO.048 OF 2019.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

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

In exercise of the powers conferred upon him by section 11(1) and 15(1) of, and Schedule 3 to, the European Union (Withdrawal) Act 2019 the Minister has made the following Regulations—

PART 1 Introduction

Title and commencement.

1. These Regulations may be cited as the Access to the International Market for Coach and Bus Services (Amendment Etc.) (EU Exit) Regulations 2019 and come into operation on exit day.

PART 2 Amendment of primary legislation

Amendment of the Transport Act 1998.

2.(1) The Transport Act 1998 is amended as follows.

(2) In Section 31 (issue of documents and certificates for other member States)—

- (a) in the heading, omit “other”;
- (b) in subsection (1), omit “other than Gibraltar”;
- (c) in subsection (1)(b), omit “other”.

(3) In Schedule 1 (supplementary provisions as to qualifications for operators licences)—

- (a) in section 3(2), for “another”, substitute “a”;
- (b) in section 11(7)(b), for “another”, substitute “a”;
- (c) in section 11(7)(c), for “another”, substitute “a”.

PART 3
Amendment of retained direct EU legislation

Amendment of Regulation (EEC) 56/83

3.(1) Council Regulation (EEC) No 56/83 concerning the implementation of the Agreement on the international carriage of passengers by road by means of occasional coach and bus services (ASOR) is amended as follows.

(2) In Article 1 (competent authorities), for “the Member States concerned”, substitute “Gibraltar”.

(3) In Article 2 (transport authorisation), for “the Member State concerned”, substitute “Gibraltar”.

(4) In Article 3 (model document), for “Member State where the vehicle is registered”, substitute “Gibraltar in respect of a vehicle registered in Gibraltar”.

(5) Omit Articles 4 (measures required to implement the ASOR) to 14 (entry into force).

(6) Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

Amendment of Regulation (EC) 1073/2009

4.(1) Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 is amended as follows.

(2) In Article 1 (scope)—

(a) in paragraph 1, in the first subparagraph, for “within”, substitute “between Gibraltar and”;

(b) in paragraph 2—

(i) in the first sentence—

(aa) for “the”, the second time it occurs, substitute “any”;

(bb) for the words after “journey”, substitute “within Gibraltar.”;

(ii) omit the second sentence;

(c) omit paragraph 3;

(d) in paragraph 4—

- (i) omit “national”;
- (ii) after “services”, insert “within Gibraltar”;
- (iii) omit “non-resident”;
- (iv) after “carrier”, substitute “established in a Member State”.

(3) In Article 2 (definitions)—

(a) in paragraph 1—

- (i) in point (a), after “with”, insert “transit through Gibraltar and with”
- (ii) after point (a), insert—
 - “(aa) a journey undertaken by a vehicle the point of departure or the point of arrival of which is in Gibraltar and the point of arrival or the point of departure of which is in a Member State, with or without transit through one or more Member States or third countries;”;
- (iii) in point (b)—
 - (aa) after “in”, the first time it occurs, insert “Gibraltar or”;
 - (bb) after “in”, the second time it occurs, insert “Gibraltar or”;
- (iv) in point (c)—
 - (aa) after “with”, insert “transit through Gibraltar and with”;
 - (bb) omit “or”, the last time it occurs;
- (v) after point (c), insert—
 - “(cc) a journey undertaken by a vehicle from the United Kingdom to a third country or vice versa, with transit through one or more Member States and with or without transit through one or more Member States or third countries; or”;
- (vi) in point (d), after “through”, insert “Gibraltar and”;

(b) omit paragraph 6;

(c) in paragraph 7—

- (i) in the first indent—
 - (aa) omit “national”;

- (bb) after “basis”, insert “in Gibraltar”;
- (cc) after “carrier”, insert “established”;
- (dd) omit “host”;
- (ii) in the second indent, for “the same”, substitute “Gibraltar by a carrier established in a”;
- (d) in paragraph 8, after “infringement of”, insert “retained EU law relating to road transport or”;
- (e) after paragraph 8, insert—

“9. ‘EU Regulation 1073/2009’ means Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (recast), as that Regulation has effect in EU law;

10. ‘EU Regulation 361/2014’ means Commission Regulation (EU) No 361/2014 laying down detailed rules for the application of Regulation (EC) No 1073/2009 as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98, as that Regulation has effect in EU law;

11. ‘third country’ means a country other than Gibraltar or a Member State.

Any reference in this Regulation to an EU instrument or to a particular provision of such an instrument:

- (a) is a reference to that instrument or provision as amended from time to time, and
- (b) if that instrument or provision is replaced, with or without modification, shall be construed as a reference to the instrument or provision replacing it.

The provisions of this Regulation shall, for the purposes of the EEA Agreement, be read with the following adaptation:

The licences issued by Iceland, Liechtenstein and Norway in accordance with EU Regulation 1073/2009, as adapted in Appendix 4 to Annex XIII of the EEA Agreement, as that Annex has effect in EU law, shall be recognised.”.

(4) In Article 3 (freedom to provide services)—

(a) in paragraph 1—

- (i) in the first subparagraph, after “services”, the first time it occurs, insert “between Gibraltar and the territory of the Community”;
- (ii) in point (a)—
 - (aa) for “national”, substitute “the”;
 - (bb) after “legislation”, insert “of that Member State”;
- (iii) in point (c), after “goods or passengers”, insert “, as those Directives have effect in EU law”;

(b) in paragraph 2—

- (i) in point (a)—
 - (aa) for “national”, substitute “the”;
 - (bb) after “legislation”, insert “of that Member State”;
- (ii) in point (b), after “2003/59/EC”, insert “, as those Directives have effect in EU law”.

(5) In Article 4 (community licence)—

(a) in paragraph 1—

- (i) after “bus”, insert “by a carrier established in a Member State”;
- (ii) after “out”, insert “within Gibraltar”;
- (iii) after “possession”, insert “by that carrier”;
- (iv) after “establishment”, insert “in accordance with Article 4 of EU Regulation 1073/2009”;

(b) omit paragraph 2;

(c) in paragraph 3, omit the first sentence;

(d) omit paragraphs 4 to 8.

(6) In Article 5 (access to the market)—

(a) in paragraph 1, in the third subparagraph—

- (i) for “a Member State”, substitute “Gibraltar”;
- (ii) for “Member State”, the second time it occurs, substitute “Gibraltar”;
- (iii) omit the words that follow “third country”, the second time they occur, to the end of the subparagraph;

(b) in paragraph 3—

- (iv) in the fourth subparagraph, for “on the territory of a Member State”, substitute “within Gibraltar”;
- (v) omit the last subparagraph;

(c) for paragraph 5, substitute—

“5. Own-account transport operations by any vehicle which is registered in a Member State shall be exempt from authorisation but shall be carried out within Gibraltar subject to possession of a certificate issued by the competent authorities of the Member State in which the vehicle is registered in accordance with Article 5(5) of EU Regulation 1073/2009 and Article 9 of EU Regulation 361/2014, which shall be valid for the entire journey including transit.”.

(7) In Article 6 (nature of authorisation)—

(a) in paragraph 1, in the first subparagraph—

- (i) for “Member State in whose territory the point of departure is situated”, substitute “Gibraltar”;
- (ii) omit the last sentence.

(b) in paragraph 2, in the second sentence—

- (i) omit “mutual consent of”;
- (ii) for “competent authorities”, substitute “authorising authority”;
- (iii) omit “of the Member States on whose territory passengers are picked up or set down”;

(c) for paragraph 4, substitute—

“4. Authorisations shall be in the format prescribed by Article 8 of EU Regulation 361/2014.”;

(d) in paragraph 5, for “territories of all Member States”, substitute “Gibraltar”.

(8) In Article 7 (submission of application for authorisation)—

(a) for paragraph 2, substitute—

“2. Applications shall be in the format prescribed by Article 7 of EU Regulation 361/2014.”.

(b) in paragraph 3, for “Community legislation”, substitute “retained EU law”.

(9) In Article 8 (authorising procedure)—

(a) omit paragraphs 1 and 2;

(b) in paragraph 4, in the first subparagraph—

(i) in point (b), after “of”, the first time it occurs, insert “retained EU law relating to road transport or”;

(ii) in point (d)—

(aa) for “a Member State”, substitute “the authorising authority”;

(bb) after “analysis”, insert “and non-discriminatory criteria”;

(cc) for “Community”, substitute “retained EU”;

(dd) omit the last sentence;

(iii) in point (e)—

(aa) for “a Member State”, substitute “the authorising authority”;

(bb) for “different”, substitute “Gibraltar and a”;

(cc) for “States”, substitute “State”;

(c) in paragraph 4, in the second subparagraph—

(i) for “Community”, substitute “retained EU”;

(ii) for “a Member State”, substitute “the authorising authority”;

(iii) omit “, with the agreement of the Commission,”;

- (d) in paragraph 5, omit “and the competent authorities of all the Member States involved in the procedure to reach the agreement provided for in paragraph 1”;
 - (e) in paragraph 6—
 - (i) in the first subparagraph, for “1”, substitute “3”;
 - (ii) in the second subparagraph, for the second sentence, substitute—

“Transport undertakings may make representations in the event of their application being refused.”;
 - (iii) omit the third subparagraph;
 - (f) omit paragraphs 7 to 9.
- (10) In Article 9 (renewal and alteration of authorisations), omit the second and third subparagraphs.
- (11) In Article 10 (lapse of an authorisation), omit paragraph 3.
- (12) In Article 11 (obligations of carriers)—
- (a) in paragraph 1, for “competent”, substitute “authorising”;
 - (b) in paragraph 3, for “Member State concerned, by common agreement and”, substitute “authorising authority”.
- (13) In Article 12 (control documents)—
- (a) for paragraph 1, substitute—

“1. With the exception of the services referred to in the second subparagraph of Article 5(3), occasional services by a carrier established in a Member State shall be carried out under cover of a journey form supplied by the competent authority of that Member State or a body appointed by that authority in accordance with Article 12 of EU Regulation 1073/2009 and Section I of EU Regulation 361/2014.”;
 - (b) omit paragraphs 4 and 5.
- (14) In Article 13 (local excursions)—
- (a) in the first subparagraph—
 - (i) after “carrier”, insert “established in a Member State”;

(ii) for “a Member State other than that in which it is established”, substitute “Gibraltar”;

(b) in the second subparagraph—

(i) omit “non-resident”;

(ii) after “passengers”, insert “who are not resident within Gibraltar and have been”.

(15) In Article 15 (authorised cabotage operations), in point (c), for “host Member State”, substitute “Gibraltar”.

(16) In Article 16 (rules applicable to cabotage operations)—

(a) in paragraph 1—

(i) in the first subparagraph—

(aa) for “Community legislation”, substitute “retained EU law”;

(bb) for “the”, the third time it occurs, substitute “other”;

(cc) for “host Member State”, substitute “Gibraltar”;

(ii) omit the second subparagraph;

(b) in paragraph 2—

(i) for “Community legislation”, substitute “retained EU law”;

(ii) for “the”, the second time it occurs, substitute “any other”;

(iii) for “host Member State”, substitute “Gibraltar”;

(c) in paragraph 4—

(i) for “national”, substitute “other”;

(ii) omit “non-resident”;

(iii) after “carriers”, insert “established in Member States”;

(iv) for “host Member State”, substitute “Gibraltar”.

- (17) In Article 17 (control documents for cabotage operations)—
- (a) omit paragraph 3;
 - (b) in paragraph 4, omit the last sentence;
 - (c) omit paragraph 5.
- (18) Omit Article 20 (mutual assistance).
- (19) In Article 21 (withdrawal of community licences and authorisations)—
- (a) in the heading, omit “Community licences and”;
 - (b) omit paragraph 1;
 - (c) in paragraph 2, omit the words after “Regulation” to the end of the paragraph.
- (20) Omit Articles 22 (sanctioning of infringements by the Member State of establishment) to 28 (reporting).
- (21) Omit Article 31 (entry into force).
- (22) Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.
- (23) Omit Annexes I (security features of the Community licence) and II (Community licence model).

Amendment of Decision No 1/2011 of the Joint Committee established under the Interbus Agreement

5.(1) Decision No 1/2011 is amended as follows.

(2) Omit Article 1 and Annex I.

(3) In this regulation, “Decision No 1/2011” means Decision No 1/2011 of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 adopting its rules of procedure and adapting Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and the requirement concerning the social provisions referred to in Article 8 of the Agreement.

Amendment of Commission Regulation (EU) 361/2014

6.(1) Commission Regulation (EU) No 361/2014 laying down detailed rules for the application of Regulation (EC) No 1073/2009 as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98 is amended as follows.

- (2) Omit Section I (control document).
- (3) In Article 7 (authorisations), in paragraph (2)—
 - (a) in point (c), for “Regulation (EC) No 1073/2009”, substitute “Regulation (EC) No 1073/2009, as that Regulation has effect in EU law”;
 - (b) in point (f), for “Union legislation”, substitute “retained EU law”.
- (4) For Section III (certificates), substitute—

“SECTION III
EEA AGREEMENT
Article 9

The provisions of this Regulation shall, for the purposes of the EEA Agreement, be read with the following adaptations:

- (a) The documents issued by EEA states shall be recognised.
 - (b) In Article 7, the words “retained EU law” shall read “legislation applicable to the EEA Agreement”.
 - (c) In the documents set out in Annexes III and IV, the words “Member States” shall read “Member States, Iceland, Liechtenstein or Norway”, the words “retained EU law” shall read “legislation applicable to the EEA Agreement” and the words “Community licence” shall read “licence”.
- (5) Omit Section IV (communication of statistical data).
 - (6) In Article 11 (transitional provisions), omit paragraphs 1 and 2.
 - (7) Omit Article 13 (entry into force).
 - (8) Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.
 - (9) Omit Annexes I (model journey form) and II (model cover of book of journey forms).

- (10) In Annex III (model application for authorisation or for renewal of authorisation)—
- (a) on the cover page, after “Member States”, insert “and Gibraltar”;
 - (b) on the second page, for “Union legislation”, substitute “retained EU law”;
 - (c) on the third page —
 - (i) in paragraph 1—
 - (aa) in point (c), for “Regulation (EC) No 1073/2009”, substitute “Regulation (EC) No 1073/2009, as that Regulation has effect in EU law”;
 - (bb) in point (f), for “Union legislation”, substitute “retained EU law”;
 - (ii) in paragraph 4, for “the Member State from which the service departs”, substitute “Gibraltar for the purpose of Regulation (EC) No 1073/2009”.
- (11) In Annex IV (model authorisation)—
- (a) on the first page—
 - (i) omit—
 - (aa) “ISSUING STATE”;
 - (bb) “International distinguishing sign (1)”;
 - (cc) the footnote numbered “(1)”;
 - (ii) after “Member States”, insert “and Gibraltar”;
 - (b) on the second page, in paragraph 6, omit “(1)” and the footnote.
- (12) Omit Annexes V (model certificate) and VI (model communication).

Amendment of the EEA Agreement and related Decisions

7.(1) The EEA Agreement is amended as follows.

- (2) In Annex XIII (Transport)—
- (a) in point 32a., omit the words “The provisions of” to the end of point (f);
 - (b) in point 32aa., omit the words “The provisions of” to the end of point (f).

8.(1) The Decision of the EEA Joint Committee No 88/2014 of 16 May 2014 amending Annex XIII (Transport) to the EEA Agreement is amended as follows.

- (2) In Article 1, in paragraph 4, omit the words “The provisions of” to the end of point (f).
- (3) In Article 2, omit “4”.
- (4) Omit Articles 3 to 5.
- (5) In the Annex, omit—
 - (i) “2. Appendix 4 is replaced by the following:”;
 - (ii) the document entitled “APPENDIX 4”.

9.(1) The Decision of the EEA Joint Committee No 158/2015 of 11 June 2015 amending Annex XIII (Transport) to the EEA Agreement [2016/2193] is amended as follows.

- (2) In Article 1, in paragraph (1), omit the words “The provisions of” to the end of point (f).
- (3) Omit Articles 2 to 4.

PART 4

Revocation of retained direct EU legislation

10. The following Decisions are revoked—

- (1) Council Decision 82/505/EC of 12 July 1982 concluding the Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services (ASOR);
- (2) Council Decision 2002/917/EC of 3 October 2002 on the conclusion of the Interbus Agreement on the international occasional carriage of passengers by coach and bus;
- (3) Council Decision 2010/308/EU of 11 March 2010 concerning the position of the European Union regarding draft Decision 1/2003 of the Joint Committee set up under the Interbus Agreement on the international occasional carriage of passengers by coach and bus;
- (4) Council Decision (EU) 2018/1034 of 16 July 2018 on the position to be taken, on behalf of the European Union, within the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxx of that Committee.

Dated 14th March, 2019.

PJ BALBAN,
Minister with responsibility for Transport.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers conferred by sections 11(1) and 15(1) of the European Union (Withdrawal) Act 2019 and Schedule 3 to that Act in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom and Gibraltar from the European Union.

These Regulations make amendments to legislation in the field of international bus and coach services. Part 2 amends primary legislation, Part 3 amends retained direct EU legislation and Part 4 revokes retained direct EU legislation.

The amendments are designed to address the risk that, in the absence of a withdrawal agreement, EU rules that facilitate access to the Gibraltar market by EU carriers will cease to be legally operable because they only apply to carriage within the EU. This will be a consequence of Gibraltar becoming a third country on exit day. There will no longer be any legal basis within the EU for the current system of multilateral authorisation of regular international services by all relevant authorities. This system must be replaced by a new process that involves unilateral authorisation by Gibraltar authorities only of regular international services operated to and from Gibraltar by EU carriers.

This will facilitate access to the Gibraltar market by EU carriers until the agreement between the EU and third countries on the international occasional carriage of passengers by coach and bus (known as the Interbus Agreement) applies to Gibraltar, the said agreement being extended to regular services. When the Interbus Agreement applies to Gibraltar, which is expected to occur shortly after exit day, Gibraltar carriers will be able to access the EU market, subject to compliance with that agreement. In consequence, there is likely to be a brief period during which the EU/Gibraltar market access arrangements for buses and coaches are not reciprocal.

The amendments are also designed to continue the recognition of Community Licences issued to EU carriers and allow other international services, which do not currently require authorisation, to continue on the basis of the standard control documents used within the EU.

The amendments are no more than appropriate for these purposes.

Regulation 2 amends the Transport Act 1998.

Regulation 3 amends Council Regulation (EEC) No 56/83 concerning the implementation of the Agreement on the international carriage of passengers by road by means of occasional coach and bus services (ASOR).

Regulation 4 amends Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006.

Regulation 5 amends Decision No 1/2011 of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 (etc.).

Regulation 6 amends Commission Regulation (EU) No 361/2014 laying down detailed rules for the application of Regulation (EC) No 1073/2009 as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98.

Regulations 7 to 9 amend Annex XIII to the EEA Agreement and related Decisions.

Regulation 10 revokes redundant Decisions.