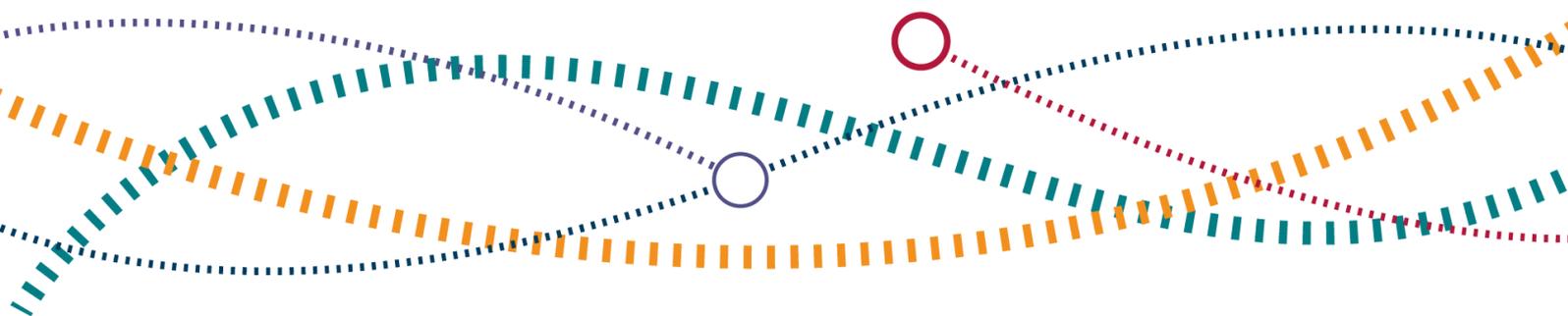




Accessible Travel Policy Guidance: accessibility of rail replacement services

A consultation response

16 September 2020



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Introduction

The ORR's vision is of a railway network where passengers can request assistance with confidence and ease, safe in the knowledge that it will be provided reliably, effectively, and consistently by staff that have the training and knowledge to do so with confidence and skill.

This publication is the ORR response to our public consultation on changes to the Accessible Travel Policy (ATP) Guidance for train and station operators ("the Guidance"), published in July 2020, which was designed to improve the availability of accessible vehicles for use by disabled passengers during rail disruption. It provides a brief summary of responses, an explanation of the new Guidance requirements for train operators that provide rail replacement services, an overview of the proposals we have included in a letter to industry bodies for them to consider, and our plan for working with the Driver and vehicle Standards Agency (DVSA) to provide clarity in our respective roles for monitoring and enforcing the new requirements.

Alongside this document we have published updated Guidance, an Equality and Regulatory Impact Assessment, and letters to the rail industry and to the Rail Minister.

ORR's updated ATP Guidance:

- reflects the legal advice we published in February this year by setting out in the Guidance that, with limited exceptions, rail replacement bus and coach services must comply with the Public Service Vehicle Accessibility Regulations (PSVAR);
- introduces new rules on taking appropriate steps to secure accessible rail replacement services via contract tenders to maximise the use of available accessible vehicles, in particular during planned engineering works;
- ensures passengers know where accessible buses and coaches will be operated, by updating the obligations on operators to proactively provide information during disruption; and
- reinforces our requirement that, where needed, passengers are offered an appropriate alternative arrangement, including alternative accessible transport; and requires that waiting times for accessible taxis during planned disruption are, where reasonably practicable, similar comparable to waiting times for rail replacement buses and coaches.

1. Background

Overview

- 1.1 The ATP Guidance included the requirement to set out how, in cases of planned disruption, train companies will make reasonable endeavours to secure accessible rail replacement services, and, where they are unable to do so, to set out why. Following its publication, ORR received a challenge on behalf of an individual which caused us to reconsider this requirement. The challenge proposed that compliance with relevant law required ORR to amend the relevant licence condition or guidance to ensure that buses and coaches providing rail replacement services during planned disruption comply with the Public Service Vehicle Accessibility Regulations (PSVAR).
- 1.2 PSVAR ensures buses, and in certain circumstances coaches from 1 January 2020¹, are accessible to disabled people. They are enforced by the Driver and Vehicle Standards Agency (DVSA), and reflect the importance of ensuring that disabled people, and in particular wheelchair users, are able to access the same local and scheduled bus and coach services as persons who do not have a disability or persons whose disability gives rise to different needs.
- 1.3 ORR sought legal advice on the applicability of PSVAR to rail replacement services. We published this advice on 30 September 2019² and requested comments. This draft legal advice concluded that the PSVAR apply to rail replacement services. We published the responses³, to that legal advice from interested parties. On 6 February 2020 we published final legal advice⁴ which confirmed the draft conclusion.
- 1.4 To further inform our consideration, we also sought further data from train operators on the accessibility of buses and coaches they had used over the past 12 months on their rail replacement services.

¹ See Special authorisations section below.

² https://orr.gov.uk/data/assets/pdf_file/0005/41864/accessible-travel-policy-rail-replacement-services-full-legal-advice-2019-09-30.pdf

³ https://orr.gov.uk/data/assets/pdf_file/0013/42205/responses-to-legal-advice-on-the-applicability-of-the-public-service-vehicles-accessibility-regulations-december-2019.pdf

⁴ https://orr.gov.uk/data/assets/pdf_file/0003/42483/accessible-travel-policy-rail-replacement-services-final-legal-advice-2020-02-06.pdf

Consultation on ATP Guidance changes

- 1.5 Our overall objective is to ensure that all passengers can request and receive assistance to travel safely with confidence and ease. Low-floor buses are widely available and in use across Great Britain, including on shorter rail routes when there is disruption. However, there are currently not enough accessible coaches available for hire during disruption to long-distance rail journeys. Passengers are therefore usually offered an accessible taxi, but this also may not be appropriate for all disabled passengers.
- 1.6 We recognise the role of accessible rail replacement services in terms of eliminating discrimination against disabled people and in advancing equality of opportunity for this cohort. To ensure that this happens, we sought views on additional requirements within the ATP Guidance in the following areas, having sought and received further information from train operators on the provision of rail replacement services:
- Mandatory tendering for accessible buses and coaches in rail replacement contracts, to incentivise investment in the supply chain and increase the availability of vehicles over time;
 - Encouraging earlier procurement and greater use of accessible vehicles at times of planned disruption;
 - Proactive provision of information to passengers on the accessibility of rail replacement services, and on any alternatives that may be more appropriate; and
 - Working with industry partners to improve the provision of accessible coaches during large-scale engineering works.
- 1.7 The “Accessible Travel Policy Guidance – accessibility of rail replacement services” consultation ran from 20 December 2019 to 14 February 2020.⁵ To ensure we reached a wide audience we produced our consultation in accessible pdf, large print and Easy Read formats.
- 1.8 In addition to the consultation, we also published a draft impact assessment of our proposals.

⁵ <https://orr.gov.uk/rail/consumers/consumer-consultations/consultation-on-accessible-travel-policy-guidance-accessibility-of-rail-replacement-services>

Special authorisations

- 1.9 Shortly before publication of our consultation, the Rail Minister Chris Heaton-Harris MP granted a one-month extension from the requirements of PSVAR from 1 January 2020 to 31 January 2020.⁶ On 23 January, the Rail Minister allowed coach and bus operators who provide rail replacement services, to apply for strictly time-limited special authorisations of up to three months for the use of non-compliant coaches and buses for rail replacement services. He asked that the Rail Delivery Group (RDG) provide a copy of the industry’s plan to provide fully compliant rail replacement services, by Easter Parliamentary recess.⁷
- 1.10 On 30 April the Minister published a letter responding to RDG’s plan “Rail Replacement Vehicles – a pathway to regulatory compliance”⁸. The letter set out his decision to grant further exemptions for up to eight months, asked the rail industry to come forward with a more ambitious timeline for the delivery of accessible rail replacement services, and described the steps he expected train operators would take to ensure rail replacement services meet the needs of disabled people and others with reduced mobility in the meantime.
- 1.11 ORR agreed to collect and analyse data from industry during this recommended period of special authorisations. This will look at the level of compliance with PSVAR for rail replacement services, the use of non-PSVAR compliant vehicles and the number and types of alternatives provided (e.g. taxis). From autumn 2020, it will also look at the number of complaints that are received by train operators where the alternatives provided have fallen short of expectations of safety, comfort and timing. Should the period of special authorisations extend beyond December 2020, this regular data-monitoring would be completed on a 6-monthly basis.

Impact of Covid-19

- 1.12 In response to the Covid-19 pandemic, the Government advised people against non-essential travel on public transport. Although this has subsequently changed with people being advised to only travel by public transport where they have no

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853813/Compliance_with_rail_accessibility_requirements.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861265/compliance-rail-accessibility-requirements-period-1-february-to-30-april-2020.pdf

⁸ The letter can be found online at: <https://www.gov.uk/government/publications/rail-replacement-vehicles-extension-of-non-accessible-period>. The RDG plan is also available online at: <https://www.raildeliverygroup.com/component/arkhive/?task=file.download&id=469776205>

other options, and again more recently in England to say that public transport can be used safely, this advice has had a significant impact on the demand for rail travel including from those passengers who require assistance to do so. Recent data from the Department for Transport⁹ shows that from the end of March to mid-May the number of rail journeys was at approximately 5% the level of the same time last year. Rail usage then slowly increased; throughout August the number of journeys was 31-38% of the level recorded the same time last year. Whilst ORR's most recent figures for passenger assistance only capture the early weeks of lockdown, 2019/20 data shows that there were 1.2 million booked assists, a decrease of 5.2% compared to the year before.

- 1.13 It is highly likely that the number of passengers travelling requiring assistance making discretionary trips will remain low for the foreseeable future. It may only increase substantially as and when the Government begins to encourage non-essential trips by public transport and, importantly, as and when disabled people, including those that require assistance to travel, feel they are ready to begin to take such trips. In the meantime, this lack of passengers requiring assistance to travel may have an impact on the usefulness of the data we collect on rail replacement services.
- 1.14 In addition, social distancing measures have had a significant negative impact on the leisure coach market, on which rail replacement suppliers rely for long-distance substitute transport. A number of companies have gone into administration since May, including the parent company of holiday coach operators Shearings and National Holidays. All companies will have lost their main source of revenue for a period of months. As part of our planned monitoring activities, we will assess the extent to which this impacts on the ability of rail replacement suppliers to source PSVAR-compliant coaches.

⁹ <https://www.gov.uk/government/statistics/transport-use-during-the-coronavirus-covid-19-pandemic>

2. Consultation Responses

Overview

- 2.1 In total, we received 49 responses to the consultation from a wide range of interested and affected individuals, groups and organisations, including transport consultants. Six individuals responded, alongside seven disabled people's organisations, four transport user or campaign groups, 10 train and station operators and owning groups and four coach operators or rail replacement suppliers. We published all responses on our website in March 2020¹⁰, alongside an update on our next steps. Personal data was redacted.
- 2.2 We are grateful to respondents for their helpful, comprehensive and considered responses. We particularly thank those individuals that have shared their own experience of using rail replacement services during both planned and unplanned disruption. We welcome the overall support for our work in this area, and for our proposals to improve the experience of rail replacement services for people that would benefit from greater numbers of accessible vehicles and infrastructure. Every response has been read and given careful consideration.
- 2.3 During the period of public consultation we met with our Accessible Travel Stakeholder Forum to discuss our proposals with organisations that represent people with a wide range of impairments from across Great Britain¹¹. We also held a number of meetings with RDG as it worked to develop a robust and achievable pathway to providing fully compliant rail replacement services. In addition, we worked with the Department for Transport (DfT) and DVSA to develop our plan to monitor the provisions of those services (see **section 4** of this document).
- 2.4 Following the close of the consultation we also visited Blackpool Transport with the Minister for Disabled People's Rail Sector Champion, Stephen Brookes MBE, to discuss the company's experience of providing rail replacement transport. We are grateful to Blackpool Transport and to Stephen for their time and assistance. We also met with the Disabled Persons Transport Advisory Committee, the Equality and Human Rights Commission, Mobility and Access Committee for Scotland, London TravelWatch and Transport Focus.

¹⁰ https://orr.gov.uk/data/assets/pdf_file/0008/42578/rail-replacement-services-consultation-responses-2020-03-03.pdf

¹¹ https://orr.gov.uk/data/assets/pdf_file/0004/42691/orr-accessible-travel-stakeholder-forum-2020-02-12.pdf

Out of scope responses

- 2.5 Some responses to the consultation made proposals related to the wider, underlying issues and barriers to the delivery of accessible rail replacement services. These included changes unsuitable for monitoring and enforcement via passenger and station operator licence conditions or require a change in legislation or could be most effectively implemented at an industry level. These included:
- Provision of a dedicated fleet of PSVAR-compliant / accessible vehicles, either by an individual train operator or transport owning group, or supplied at a national level for use during disruption (whether unplanned or planned);
 - A collective or joint approach to rail replacement vehicle procurement, to better coordinate provision and provide a larger incentive for bus and coach operators to bid for rail replacement work;
 - Deeper consideration of the impact on the provision of accessible rail replacement journeys when Network Rail are planning track possessions for engineering work; and
 - Legislative change.
- 2.6 We have therefore written to the **Chief Executives of Network Rail and RDG** highlighting the relevant proposals put forward by respondents that they may wish to consider further.
- 2.7 We have also written to the **Rail Minister**, reflecting consultation respondents' views that without legislative change there are limited incentives on coach operators to invest in accessible vehicles, and reinforcing the importance of ORR working closely with DVSA to ensure they are able to investigate any alleged breaches of PSVAR brought to our attention.¹²

Next steps

- 2.8 We set out in section 4 our next steps for implementing the new ATP requirements together with our approach to monitoring and working with DVSA.

¹² Both letters can be found online at: <https://www.orr.gov.uk/search-consultations/consultation-accessible-travel-policy-guidance-accessibility-rail-replacement>

Consultation questions, summary of responses and ORR's response

2.9 In this section we provide a high-level summary of responses to our consultation questions together with ORR's response. All responses have been fully considered. This summary section is not intended to replace in full the responses we have received; these were published on the ORR website, and consequently available to all interested parties, from 3 March 2020.

Question 1: Can you provide any data or information beyond what is set out here on the availability and use of accessible buses and coaches for rail replacement services?

2.10 Several train operators that responded provided helpful additional information regarding the availability and use of accessible buses and coaches for rail replacement services. This reinforced to us the limited availability of accessible coaches and the variance in availability across Great Britain, highlighted that peak demand for these vehicles significantly exceeds the total number available, and provided details of the cost of compliance with PSVAR. A number of other respondents also provided useful information, including on the availability of accessible vehicles in different areas of the country and, anecdotally, the extent to which rail replacement suppliers may not be making full use of the available accessible coaches.

2.11 ORR RESPONSE

We have incorporated this additional information in the Equality and Regulatory Impact Assessment (ERIA) of the ATP Guidance changes.

Question 2: How can rail operators prioritise the available accessible coaches to maximise the opportunities for passengers to make journeys on PSVAR-compliant vehicles?

2.12 This question prompted a wide range of proposals to incentivise investment in PSVAR-compliant vehicles (including by forcing operators to pay any additional costs of supplying accessible vehicles through higher rates – this highlights a concern raised elsewhere in the responses of Transport Focus and London TravelWatch that cheaper non-compliant coaches may be used in preference over more expensive compliant coaches). Other proposals included using contracts with suppliers, better coordination of the provision and procurement of rail replacement services across the industry, and prioritising passengers' ability to

travel by rail rather than road, for instance through more use of diversionary routes or ticket acceptance on alternative routes.

- 2.13 A small number of train operators suggested Network Rail provide earlier notice of planned possessions and consider the availability of accessible rail replacement services in its planning of engineering works across the network. In its response to the consultation, Network Rail set out how it shares this information with train operators regularly through publications such as the Engineering Access Statement and the Confirmed Period Possession Plan but welcomed feedback on how it can better use or share valuable information on scheduled engineering work.

2.14 ORR RESPONSE

The ERIA contains an assessment of all the additional proposals put to us in responses. We have taken suggestions regarding tendering for rail replacement services into consideration in finalising our new Guidance requirement in this area.; We consider that many of the other proposals put to us in response to this question are best considered at an industry level by RDG or by Network Rail . Therefore, we have included them in our letter to industry, noted at para 2.6 above.

Question 3 (a).Where you have experience of using rail replacement buses or coaches or taxis, what are your views on the importance and suitability of these services?

- 2.15 We received a wide range of views from individuals, passenger champions, disabled people's organisations and rail user groups on the experience of using rail replacement buses, coaches and taxis, and the suitability of these services, both positive and negative. These covered vehicle facilities (e.g. toilets), vehicle availability and vehicle capacity (including for luggage), staff availability and helpfulness, and the accessibility of station and kerbside infrastructure. These respondents' experiences of taxis and coaches was broadly negative, with waiting times for taxis a particular concern, although one transport consultancy did highlight particular benefits taxis may be able to offer to some passengers. Some respondents noted that blind and visually impaired people may be able to travel on non-PSVAR-compliant vehicles but also that compliant vehicles offer vital features that enable them to travel more easily.
- 2.16 A small number of train operators suggested ORR should commission further research in this area.

Question 3 (b). If you have a disability, please explain whether, and how, the service was appropriate for your needs.

2.17 Disabled passengers and disabled people's organisations provided broadly negative views on the suitability of the rail replacement services they had used for their needs. In particular, that journeys may be long or uncomfortable even on PSVAR-compliant vehicles, with poor signage, shelter or lighting at the kerbside and potentially a significant distance between station entrance and the kerb. One transport consultancy also highlighted that autistic people may require a quiet space to travel in, and that other passengers may also have particular individual needs.

Question 3 (c). Do you have a preference for the type of replacement service you receive? If so, please explain why.

2.18 Amongst individuals, passenger champions, disabled people's organisations and rail user groups who responded, a coach was the most popular rail replacement service, primarily for the benefits provided over longer distances e.g. comfort, luggage space. Local low-floor bus was the next most popular mode of transport – over short distances – due to their accessibility. Four respondents suggested they would prefer to travel on alternative rail routes than travel on a replacement road service, although cost and ticket acceptance were noted as constraints. Taxi was the least preferred option, including by Guide Dogs which raised its concern about taxi drivers refusing to accept assistance dogs despite the legal requirement to do so.

2.19 ORR RESPONSE

We have taken into account respondents experiences and preferences in our ERIA.

The range of views expressed reiterates the role of passenger preference in the provision of rail replacement services – what is suitable for one passenger's needs may not be suitable for the next. It also underscores the importance of compliance with the legal requirements on the comfort and safety of these services.¹³ Therefore, we have emphasised in the updated Guidance that rail replacement options must be discussed with passengers and alternative accessible transport offered where appropriate. We have also introduced a new requirement that when rail replacement services are provided during major engineering works, where

¹³ As set out in Section 248 of the Transport Act 2000

reasonably practicable the waiting times for taxis must be similar to those for buses and coaches.

Question 4. Can you provide any additional data on the number of disabled passengers, and passengers overall, using rail replacement services?

2.20 We received additional data regarding a small number of train operators. Of note, c2c indicated that during recent disruption none of the 12807 passengers using its rail replacement services were wheelchair users or 'mobility impaired'. Avanti indicated it provided on average 11 accessible taxis per rail period (i.e. every four weeks). Rail Future commented that the number of disabled people using rail replacement is low comparative to total users but that there are often significant numbers of older passengers with luggage. An individual respondent suggested that many disabled people do not travel on rail replacement due to the perception that it will not be accessible for them, whilst Croydon Council suggested this would change as services become more accessible. RDG indicated in its response that from February 2020 it has developed additional reporting and will provide this new data monthly to DfT.

2.21 ORR RESPONSE

The additional data provided has helped to inform our ERIA.

Question 5. We are particularly interested to understand more - including through provision of relevant data - regarding the potential impact on Network Rail possessions identified by some train operators. What further information is available to support this point?

2.22 Several respondents used this opportunity to explore the impact of Network Rail possessions on passengers and proposed mitigations. In particular, Sheffield Transport 4 All noted that Network Rail has a public sector equality duty under the Equality Act and suggested, as did Travel NorthWest, DPTAC and one individual, several measures to mitigate the impact of possessions on disabled people's ability to travel.

2.23 Only a small number of respondents answered this question directly. Of these, Network Rail reiterated that The Network Code sets out the considerations it is expected to apply in order to achieve industry objectives¹⁴, and requires Network Rail to apply these considerations in a balanced way and give appropriate weight

¹⁴ The Network Code Part D, 4.6 – "The Decision Criteria"

to those which are most important¹⁵. Given the lack of PSVAR-compliant rail replacement vehicles, Network Rail indicated it would not recommend giving more weight to the availability of alternative transport provisions in relation to other, more explicit considerations in the Decision Criteria, such as the need to efficiently maintain, develop and improve the capability of the network and its performance.

- 2.24 Rather than focus on possessions, several train operators highlighted the risk of having to issue 'Do Not Travel' notices to passengers if sufficient compliant vehicles cannot be sourced, particularly when there are engineering works across a number of routes in close proximity. Southeastern noted that Network Rail will in case of dispute still eventually obtain track access via the Access Disputes Resolution Committee.

2.25 ORR RESPONSE

The risk to train operators of not being able to source sufficient numbers of PSVAR-compliant vehicles has now been mitigated by the special authorisations provided by DfT. As a result, the potential impact on possessions is weaker. Nonetheless, a number of suggestions have been made regarding Network Rail's consideration of rail replacement services when possessions are planned which we have reflected in our letter to industry.

Question 6. Do you have any views on our proposal not to duplicate the enforcement of PSVAR by mandating compliance with PSVAR in the ATP Guidance?

- 2.26 Train and station operators agreed that DVSA has sufficient statutory powers to render duplication of enforcement redundant. However, the Equality and Human Rights Commission (EHRC) suggested ORR enter into a Memorandum of Understanding with DVSA to share intelligence, enforcement priorities and responsibilities from the point that PSVAR-compliant coaches become readily available. In addition, DPTAC, whilst agreeing that only one body should be responsible for PSVAR enforcement, proposed a phased approach to ORR mandating compliance with PSVAR – only mandating when the operation of accessible rail replacement is fully achievable. DPTAC suggested this this could immediately be the case for short distance journeys, where accessible local buses are predominantly used. A number of other respondents also suggested mandating compliance after a defined period of time.

¹⁵ The Network Code Part D, 4.5

2.27 Scope highlighted its concerns about the myriad of regulators and complaints bodies across transport, whilst Transport Focus and London TravelWatch reinforced the need for a joined-up approach across regulatory boundaries. Several other passenger groups also suggested that clarity of DVSA and ORR roles and responsibilities needs to be clearly communicated to passengers and stakeholders. One individual commented that DVSA's record of proactive enforcement was poor, which meant that in practical terms duplication was unlikely.

2.28 ORR RESPONSE

As set out in Section 3 below, following legal advice and reflecting respondents concerns that the legislation is complied with, we have updated the ATP Guidance to reiterate the legal position for the benefit of train operators: when used for rail replacement, buses and coaches must either be compliant with PSVAR or operate under special authorisation from DfT.

Section 4 below sets our monitoring and enforcement approach and our planned work with DVSA to ensure there is clarity on regulatory oversight of train, bus and coach operators in the delivery of rail replacement services.

Question 7. How can train operators use contractual arrangements to incentivise suppliers to increase the provision of PSVAR-compliant vehicles?

2.29 We received many detailed suggestions in response to this question, (and others provided in response to Question 2). They included increasing the value of the contracts, adding in 'retainers', specifying that the number of PSVAR-complaint vehicles increase over time, and refusing to award contracts to coach suppliers with insufficient compliant vehicles. A collective approach to procurement across the rail industry was another suggestion, with train operators awarding contracts jointly to increase unitisation of vehicles and provide a stronger incentive for investment.

2.30 However, a number of responses from train companies argued that mandating compliant vehicles through contracts between train companies and suppliers would not by itself not lead to any increase in provision. This, they suggested, is because rail replacement usually makes up a small part of coach suppliers' business, and therefore any contractual amendments are unlikely to result in a business case to invest in new PSVAR-compliant coaches. One operator provided evidence of a reduction in the number of suppliers bidding for rail replacement work where compliant vehicles have been a requirement. Some respondents cited

a further barrier to investment in PSVAR compliance: the current cost pressures faced by coach operators that have to meet the requirements of Clean Air Zones and Ultra Low Emission Zones.

2.31 ORR RESPONSE

All proposals have been considered as part of the ERIA, and where we have not considered it appropriate to adopt any proposal put to us, this has been explained. We have therefore added new rules on tendering for accessible rail replacement services, with a particular focus on considering the need for and procuring the use of accessible vehicles for use during planned engineering works. Please see Section 3.

Question 8. Do you have a view on the 12-week time limit we have proposed for a train operator to demonstrate that it has taken appropriate steps to assess the requirement for, and to procure the use of, PSVAR-compliant vehicles?

2.32 Passenger groups and passenger champions were broadly supportive of the 12-week time limit. However, the Go-Ahead and First Group companies that responded suggested that changes to Network Rail's possession planning process would need to be made to facilitate the 12-week limit, or the limit would need to be extended, for instance to 16 weeks. A number of other respondents, including Network Rail, several train companies, EHRC and RDG, suggested there would need to be flexibility to accommodate late notice changes to planned disruption, including on the Nexus network where less notice is provided. EHRC was also concerned that this proposal would not benefit passengers that use rail replacement services arranged with less than 12 weeks' notice. Network Rail indicated that at 12 weeks train companies have sufficient information to assess the requirement for and procure the use of compliant vehicles.

2.33 ORR RESPONSE

Following a review of responses we consider that our proposal remains appropriate. Therefore, we have included in the revised Guidance a 12-week time limit for a train operator to demonstrate that it has taken appropriate steps to assess the requirement for, and to procure the use of, both PSVAR-compliant vehicles and alternative accessible transport during planned engineering works, which we have now defined in relation to the Network Code. We recognise that there may be circumstances where this cannot be achieved and we will take compliance with this into account on a case-by-case basis. The final Guidance requirement is set out in Section 3. We have also included in our letter to industry

suggestions made in response to this question, in particular that Network Rail consider rail replacement when planning possessions.

Question 9. What do you see as the advantages and/or disadvantages of each of the proposals? Do you have a preferred ranking or view as to whether some or all could be used in combination?

2.34 We received lots of detailed comments in response to this question, which are explored in more detail in Section 3. Overall, respondents were broadly supportive of our proposals, although as set out previously industry respondents in particular reiterated their limitations in terms of delivering larger numbers of accessible vehicles. A number of respondents ranked them in various orders; most, however, suggested that the proposals worked best in combination.

2.35 ORR RESPONSE

Proposals 1, 2, 3 and 4 (set out below in their original form) are now included, with some amendments explained in Section 3, in the final revised Guidance. We agree that these proposals work best in combination to ensure operators make the maximum use of available vehicles and ensure passengers are informed of the accessible transport options available to them during disruption/

Proposal 1: Train operators must take appropriate steps to source PSVAR-compliant vehicles through explicit requirements in tenders and contracts with vehicle suppliers.

Proposal 2: For planned disruption, the train operator must be able to demonstrate it has taken appropriate steps to assess the requirement for, and to procure the use of, PSVAR-compliant vehicles at least 12 weeks before all major planned engineering works.

Proposal 3: For planned disruption, the train operator should take appropriate steps to contact those passengers that have booked assistance in advance of travel to provide information on the use of rail replacement services and discuss the individual needs and preferences of the passenger (which may result in increased use of buses or taxis in some circumstances).

Proposal 4: For planned disruption, train operators should provide passengers with appropriate, accurate and timely information about the accessibility of the rail replacement transport they will be providing for the affected service and the options available to the passenger to be able to make their journey.

2.36 **We have not included proposal 5**; that for planned disruption, train operators should establish a regular communication forum – including amongst others DfT, RDG and suppliers of rail replacement services to identify and better manage the availability and use of PSVAR-compliant vehicles at times of high demand (e.g. Christmas, Easter and bank holidays). We consider it is unsuitable for inclusion as a licence requirement for individual train operators, in that it requires the participation of key industry bodies that are not licence holders. Therefore, we have included this proposal in our letter to industry as set out in para 2.6 above.

Question 10. Are there any other measures that you consider would assist in incentivising the use of PSVAR-compliant vehicles for rail replacement services that we have not included here?

2.37 Respondents provided a range of measures including: removing the exemption for leisure travel operators from PSVAR to help achieve industry-wide compliance; ending the period of special authorisations; additional government funding for compliant vehicles; monitoring of compliance with PSVAR and publication of compliance data; prosecuting individuals that use non-compliant vehicles or cause them to be used under section 175 of the Equality Act; and industry operating a dedicated fleet of accessible rail replacement vehicles (although, as a counterpoint, RSSB noted the cost and logistical barriers of doing this).

2.38 Providing compensation to passengers if their journey could not be completed due to disruption and / or assistance failure was also suggested.

2.39 ORR RESPONSE:

A full assessment of the measures put to us is set out in the ER IA. It is worth noting that redress for assistance failures is already an ATP Guidance requirement; passengers may also seek restitution via the National Rail Conditions of Travel or under the Consumer Rights Act if they are unable to complete their journey. Meanwhile, legislation and funding are matters for government, whilst delivery at a cross-industry level can only be co-ordinated via RDG. We have therefore included these measures in our letter to industry set out in para 2.6. We agree that monitoring and enforcement is key; our approach and plans for working with DVSA are set out in Section 4.

Question 11. Do you have any additional information not given above which you consider we should take into account in our equality and regulatory impact assessment, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic?

2.40 We received a range of additional information in response to this question. This reiterated that, although PSVAR compliance in the rail replacement market would have consequential benefits to users of school transport and holiday travel, consideration of rail replacement accessibility needs to extend beyond buses and coaches: to alternative accessible forms of transport (including taxis) that offer flexibility of provision to passengers with different needs and preferences; to station and kerbside infrastructure; to making more use of diversionary rail routes and to ticket acceptance on alternative rail routes. One respondent noted that the needs of those with non-visible disabilities such as autism must also be taken into account; furthermore, it was suggested that ORR's public sector quality duty means we must think beyond PSVAR-compliance, given its limitations, to improving access and inclusion more generally. On this point, whilst attention was drawn to non-disabled people with protected characteristics that may benefit from accessible coaches, such as older people with luggage or passengers with young children, a firm view was also expressed that more emphasis must be placed in ORR's impact assessment on reducing discrimination experienced by wheelchair users in the current provision of rail replacement coaches.

2.41 ORR RESPONSE:

We have taken these responses into account in our ERIA.

Question 12. Do you have further data, information or comments relevant to our proposed approach or to the information or evidence of the impact of our proposals on passengers or rail, bus and coach industries outlined in this consultation document?

2.42 A number of respondents set out measures to improve rail replacement accessibility that have already been described in summarising the responses to previous questions. However, training of rail replacement staff - including taxi drivers - such as on disability awareness was amongst additional proposals put forwards. Another was for the National Rail Enquiries website to set out which stations have the infrastructure and facilities to facilitate the use of PSVAR-compliant vehicles for the benefit of passengers. Other suggestions included ensuring passengers have access to accessible toilets during rail replacement journeys and reinforcing the duty to carry assistance dogs. One respondent

commented on ORR's interpretation of the date at which PSVAR came into effect for coaches of different ages. One coach operator also disagreed with our legal advice that PSVAR applies to rail replacement services. A small number of industry responses referenced the work underway that culminated in RDG's publication 'Pathway to Compliance'.

2.43 ORR RESPONSE

We have taken these responses into account in our ERIA. It is worth noting that training of taxi drivers and rail replacement staff is already included in the Guidance. We have asked train operators to provide us further information on this as part of a wider staff disability awareness training progress update. We have included in our letter to industry the suggestion from a respondent that more details are provided on the National Rail Enquiries website regarding stations that can support PSVAR-compliant vehicles.

We have considered the further legal points put to us; we do not consider that they materially alter the conclusion we have reached on the law.

3. ATP Guidance changes

ORR vision and duties

- 3.1 Our overall objective for the publication of Accessible Travel Policy Guidance has been to ensure passengers can request and receive assistance to travel safely with confidence and ease. We recognise that if all rail replacement services were PSVAR-compliant, this would improve access to travel for disabled people, and in particular for wheelchair users and others that depend on the facilities provided under PSVAR specifically. In finalising the Guidance, we have taken into account the barriers to the feasibility of delivering this in the short-term, most particularly the practical realities faced by operators at the present time, their use of special authorisations under the Equality Act 2010 and the implications for passengers. We have also considered ORR's public sector equality duty alongside our wider statutory duties (see the Equality and Regulatory Impact Assessment for further details).
- 3.2 Following receipt of final legal advice we have recognised that the ATP Guidance must reflect the law on the accessibility of buses and coaches. However, it remains that ORR is not responsible for enforcing PSVAR; this falls to DVSA. Neither are we responsible for enforcing the Rail Minister's expectations for improvements to accessibility for rail replacement services during the period of special authorisations.
- 3.3 Nonetheless, we remain convinced that rail replacement services should continue to be provided in such a way that all passengers, including disabled and older people, can travel successfully when there is disruption. We have therefore concentrated our new Guidance requirements, and our plans for future monitoring and enforcement, on ensuring train operators do their utmost to provide an accessible road vehicle as a substitute for rail during disruption for people that require one. We consider that this is particularly important during the period when operators are legally able to operate non-PSVAR compliant vehicles under special authorisations. We have also required train operators to provide passengers with the information they need to know where accessible buses and coaches will be operated and plan their journeys accordingly. This is an area we will consider further under train operators' Passenger Information During Disruption licence condition.
- 3.4 Alongside this document, we have published **updated and revised ATP Guidance** for train and station operators. We have also published an **Equality**

and Regulatory Impact Assessment of the changes we have made to the Guidance. This includes a description of the impacts on disabled people, passengers in general and bus, coach and train operators. It also contains an assessment of proposals put to us that have not been included in the Guidance, proposals that were already part of the Guidance, and proposals that we have passed on for consideration by RDG, Network Rail or the Rail Minister.

ATP Guidance changes

3.5 Below we explain how consultation responses informed the four key changes to the ATP Guidance, as well as other more minor clarifications. **Annex B** provides more details of the specific changes and their effect.

1. Compliance with PSVAR

A number of consultation respondents suggested PSVAR compliance should either be immediate (either on all routes or for shorter-distance journeys made by buses) for the benefit of passengers that cannot access non-compliant vehicles, or could be introduced in stages as the availability of compliant vehicles increases over time, for example by adding deadlines to the ATP Guidance or via explicit requirements in tenders. DPTAC suggested that compliance for shorter-distance routes could be required with immediate effect.

Taking into account these views, and reflecting the legal advice we have received, the ATP Guidance now explicitly refers to the application of PSVAR to rail replacement bus and coach services, which must comply with PSVAR unless a special authorisation is obtained. It is our understanding that special authorisations will mostly be obtained for non-compliant coaches used as rail replacements, rather than buses (which are 98% compliant). Enforcement of PSVAR remains a matter for DVSA.

2. Securing accessible vehicles in contracts with suppliers (proposals 1 & 2)

Industry consultation responses queried the extent to which tendering rules would incentivise investment in accessible vehicles by coach operators, particularly given competing investment priorities and the marginal nature of rail replacement to their core leisure and school transport businesses.

However, we agree with the Rail Minister when he set out in his April letter to Paul Plummer, RDG, his expectation that train operators exhaust the supply of PSVAR-compliant, accessible vehicles before making use of exempt vehicles. **We have therefore added new rules on tendering for accessible rail replacement**

services, with a particular focus on considering the need for and procuring the use of accessible vehicles for use during planned engineering works. We will require that train operators use the annual ATP review process to consider any opportunities to procure additional vehicles as and when the supply increases.

We agree with consultation respondents that argued these rules should extend to alternative accessible transport such as taxis and minibuses, to ensure rail replacements services can be tailored to the needs of passengers. We also agree with ORR's independent Consumer Panel, which encouraged us to ensure there is flexibility of service provision. However, we do not consider it appropriate for ORR to set and enforce the sort of price controls in the bus and coach sector that some respondents proposed we do for rail replacement services via our procurement requirements.

3. Arranging alternative accessible transport

We agreed with the consultation respondents that suggested passengers who are unable to use accessible buses and coaches, for whatever reason, must not be discriminated against. **For planned disruption, we have introduced a new requirement that – where reasonably practicable - waiting times for rail replacement services should be similar, irrespective of whether the vehicle used is a bus, coach, taxi or other alternative.** The existing ATP Guidance requirement that, where needed, passengers are offered an appropriate alternative arrangement, including alternative accessible transport (often a taxi) has also been reinforced.

4. Providing passenger information during disruption (proposals 3 & 4)

We have updated the passenger information ATP Guidance requirements to ensure passengers know where and when accessible buses and coaches will be operated. In response to concerns raised during the consultation, we have ensured this applies during both planned disruption and, as far as possible, unplanned disruption and is delivered in a range of accessible media. We have not required that a dedicated phone number be advertised for passengers to book taxis during disruption.

Where disruption is planned, passengers requesting assistance will be able to request alternative accessible transport at the point of booking. Train operators are already required to contact passengers that have booked assistance during unplanned disruption to discuss their travel options and make appropriate arrangements. They are also already required to provide in their 'Making Rail

Accessible' passenger leaflets a number for passengers to use to make contact on the day of travel, as well as the number used for booking assistance. Passengers that have not booked their assistance in advance and find there is disruption to the rail network are already able to request assistance in the usual way. However we recognise that there can be a wait for an accessible taxi to become available when disruption occurs.

Redress

The revised ATP Guidance also includes minor amendments to the section on providing **redress** when assistance is booked but not provided. In response to consultation responses that suggested operators provide passengers with clear guidance on their rights and expectations, these changes underline that passengers may also seek restitution via other routes, including the National Rail Conditions of Travel or under the Consumer Rights Act.

Other Guidance changes

- 3.6 We have removed from the ATP Guidance any out of date references, and provided additional and updated references to relevant legislation. In particular, we have revised the references to the Equality Act 2010 and the duty on operators to provide reasonable adjustments to disabled passengers, on advice from the EHRC. In line with Government guidance on accessible online publishing, we also no longer require that pdfs of **station and rolling stock accessibility information** are provided online. Instead, we have agreed with train and station operators that HTML is an acceptable accessible alternative to an accessible pdf.

Handover Protocol

- 3.7 When we published the Guidance last July, we committed to conducting a trial of new safeguarding measures to improve the reliability of the passenger assistance operators provide. We have now undertaken a successful trial on the Govia Thameslink Railway of a 'handover protocol' which ensured a member of station staff is available to provide alighting assistance before boarding the passenger, and that relevant information critical to the delivery of the assistance is passed reliably from the passenger's boarding station to the alighting station.
- 3.8 In addition to the changes set out above, we have therefore provided in **Appendix C** of the revised Guidance the details of the new 'handover protocol'. We expect this to be rolled out across the network by the end of November.

4. Next steps: monitoring & enforcement

Implementation timescales

- 4.1 It is important that the new ATP requirements are introduced in a timely manner and are reflected in the commitments made by train operators and in the actions they take to improve rail replacement accessibility for the benefit of passengers. We are requiring operators to review their ATPs, make any necessary changes and submit those to us for approval 30 November 2020. We will work with operators prior to submission of their ATPs in order to ensure they understand the new requirements.

Memorandum of Understanding

- 4.2 Many of the respondents to the consultation acting on behalf of passengers suggested that there should be robust monitoring and enforcement of the legal requirements and licence conditions for accessible rail replacement services.
- 4.3 We have entered into positive discussions with DVSA on a potential Memorandum of Understanding, something which EHRC also recommended we do. This will clarify and strengthen our respective monitoring and compliance activities in this area, and ensure they do not overlap. We will continue to develop this over the coming months. DVSA will continue to remain responsible for potential enforcement of individual breaches of PSVAR by coach operators. Where possible, ORR will pass information on any such alleged breaches brought to our attention to DVSA for investigation.
- 4.4 In line with our economic enforcement policy, ORR's regulatory focus will be concentrated on any systematic failure to put in place arrangements to procure compliant vehicles; in particular where opportunities to do so have not been reasonably taken by a train operator and there is evidence of considerable negative impact on passengers; for example, during planned disruption where there is a large number of non-compliant vehicles used by a train operator for rail replacement services.

Monitoring

- 4.5 The monitoring we have agreed with DfT to undertake this autumn in support of its granting of special authorisations will provide us with data on rail replacement bus and coach PSVAR compliance, accessible alternative transport used, and complaints received by train operators where the alternatives provided have fallen short of expectations of safety, comfort and timing. We aim to monitor these areas routinely as part of our standard compliance monitoring activity from April 2021 onwards and to publish this data thereafter.
- 4.6 In addition, when passenger assist numbers return to sufficient levels, our regular passenger surveys¹⁶ will provide us with data on the experience of passengers that experience disruption and those that travel by alternative accessible transport. We have already requested and received information on the training of drivers of rail replacement buses, coaches and taxis, as part of our wider reporting requirements for disability awareness training. We have also introduced a new requirement that train operators report to us as part of their annual ATP review the steps they have taken to review their contracts with suppliers of rail replacement vehicles.

Working with industry

- 4.7 We recognise that the shortage of PSVAR-compliant vehicles is a challenge for the rail industry. RDG has already set out its plan “Rail Replacement Vehicles – a pathway to regulatory compliance”. In his response to the plan, the Rail Minister requested a more ambitious approach to improving the accessibility of rail replacement services, whilst providing for special authorisations to bus and coach operators, exempting them from the requirements of PSVAR.
- 4.8 We considered consultation responses on our proposal that train operators should establish a regular communication group or forum to identify and better manage the availability and use of PSVAR-compliant vehicles at times of high demand (e.g. Christmas, Easter and bank holidays). The membership and objectives of this forum should be determined by the industry, but we expect it should be set up to include amongst others DfT, RDG and suppliers of rail replacement services. This could be extended to passenger groups, as proposed by some consultation respondents. It could also take the form of an RDG-led national steering group as proposed by DPTAC.

¹⁶ See: <https://www.orr.gov.uk/monitoring-regulation/rail/passengers/passenger-assistance/research>

- 4.9 We will monitor progress of this industry forum and on the passenger information initiatives set out by RDG.

Public Sector Equality Duty

- 4.10 Under the Equality Act 2010, in carrying out our activities the ORR has a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it (relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation). We have published an updated Equality and Regulatory Impact Assessment of the changes we have made to the Guidance, in accordance with our public sector equality duty under the Equality Act 2010.

Alternative Formats

- 4.11 ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. The text is available in full on the ORR website, and may be freely downloaded. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document.



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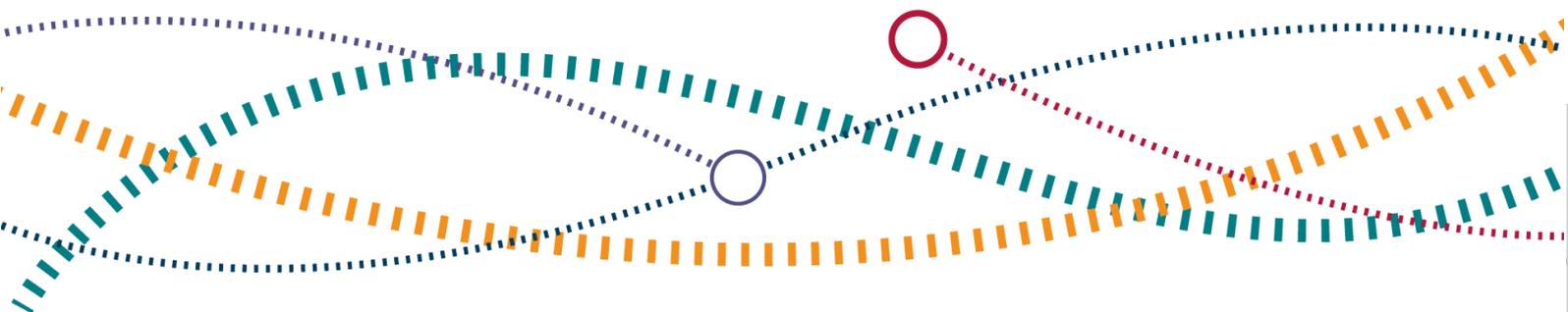
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Annex A – Table of respondents

Table 4.1 Consultation respondents

Respondent Type	Volume
Transport owning group / train / station operator	10
Disabled people's organisations	7
Individuals	6
Bus / coach / rail industry body	5
Public transport / taxi user groups / campaign groups	4
Coach operator / rail replacement supplier	4
Disability Advisory Committee	3
Passenger Champion	3
Local authority (Croydon Council, Nexus, TfL)	3
Solicitors / consultants	3
NDPB	1



Annex B – ATP Guidance text revisions

Table 4.2 Comparison of 2019 and 2020 ATP Guidance text

July 2019	September 2020
<p>Review of Accessible Travel Policies</p> <p>2.2.8 Accessible Travel Policies must be reviewed by operators annually from the date of approval, or more frequently to ensure that they are as up-to-date as possible where there is a change in policy or procedure. ORR can also require the licence holder to carry out a review of the Accessible Travel Policy or any part of it or the manner in which it has been implemented, with a view to determining whether any change should be made to it.</p> <p>2.2.9 As part of the review, operators must:</p> <ul style="list-style-type: none"> • Update their Accessible Travel Policy to reflect any changes to policies that may have occurred since the last approval or review; • Update station accessibility information where changes may have occurred; • Refresh information provided about any accessibility improvements that have been or are being carried out, or that are planned; and • Provide details of any key actions they have identified to improve performance. 	<p>Review of Accessible Travel Policies</p> <p>2.2.8 Accessible Travel Policies must be reviewed by operators annually from the date of approval, or more frequently to ensure that they are as up-to-date as possible where there is a change in policy or procedure. ORR can also require the licence holder to carry out a review of the Accessible Travel Policy or any part of it or the manner in which it has been implemented, with a view to determining whether any change should be made to it.</p> <p>2.2.9 As part of the review, operators must:</p> <ul style="list-style-type: none"> • Update their Accessible Travel Policy to reflect any changes to policies that may have occurred since the last approval or review; • Update station accessibility information where changes may have occurred; • Detail any changes to the availability of accessible public service vehicles compliant with PSVAR and alternative accessible vehicles that have been reflected in the contracts with suppliers of such vehicles; • Refresh information provided about any accessibility improvements that have been or

	<p>are being carried out, or that are planned; and</p> <ul style="list-style-type: none"> • Provide details of any key actions they have identified to improve performance.
<p>Explanation: This amendment ensures we have annual oversight of contracts with suppliers of substitute transport for use during rail disruption to ensure operators consider future changes in the availability of accessible buses, coaches, taxis and minibuses.</p>	
<p>A2.3.1c Passenger Journey Information</p> <p>Delays, diversions and disruption¹⁷: where passengers have booked assistance in advance through Passenger Assist that, because of service disruption (which may include, but not be limited to, planned industrial action or an emergency timetable), is no longer valid, operators must set out how they will contact passengers to inform them and discuss alternative arrangements; this may include but must not be limited to the use of social media. Operators must also set out:</p> <ul style="list-style-type: none"> • how they will inform passengers, including those with mental, intellectual or sensory impairments on board trains and at stations when there is disruption, a diversion or delay with no advance warning, whether assistance has been booked or not; this must include how clear aural and visual information will be provided to direct passengers to accessible substitute transport¹⁸; 	<p>A2.3.1c Passenger Journey Information</p> <p>Delays, diversions and disruption¹⁹: where passengers have booked assistance in advance through Passenger Assist that, because of service disruption (which may include, but not be limited to, planned industrial action, engineering works or an emergency timetable), is no longer valid, operators must set out how they will contact passengers to inform them, provide them with information on the use of rail replacement services and discuss with them their individual needs and preferences in coming to alternative arrangements; this may include but must not be limited to the use of social media. Operators must also set out :</p> <ul style="list-style-type: none"> • for planned disruption, how they will inform passengers, including those with mental, sensory or intellectual impairments, in advance with appropriate, accurate and timely information about the accessibility of the rail replacement transport they will be providing for the affected service and the options available to the passenger to be able to make their journey; , provide them with information on the use of rail

¹⁷ N.B. Condition 4 of the passenger train operator’s licence requires train operators to provide appropriate, accurate and timely information to enable passengers and prospective passengers to plan and make their journeys with a reasonable degree of assurance, including when there is disruption.

¹⁸ Noting the duty of operators under the Equality Act 2010 to provide reasonable adjustments

¹⁹ N.B. Condition 4 of the passenger train operator’s licence requires train operators to provide appropriate, accurate and timely information to enable passengers and prospective passengers to plan and make their journeys with a reasonable degree of assurance, including when there is disruption.

	<p>replacement services and discuss with them their individual needs and preferences in coming to alternative arrangements</p> <ul style="list-style-type: none"> • how they will inform passengers, including those with mental, intellectual or sensory impairments on board trains and at stations when there is disruption, a diversion or delay with no advance warning, whether assistance has been booked or not; this must include how clear aural and visual information will be provided to direct passengers to accessible substitute transport²⁰;
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Explanation: These amendments ensure that disabled passengers with a wide range of impairments will be informed of the accessibility of the rail replacement service offered to them during planned disruption and are presented with options to enable them to complete their journeys; the existing requirements already cover information provided disruption that occurs with no advance warning.

<p>A4 Alternative accessible transport</p> <p>[Section A4 does not apply to Network Rail]</p> <p>A4.1 Operators must ensure that passengers who require assistance are able to make as much of their journey by rail as possible. However, there are circumstances under which alternative accessible transport must be offered instead. Operators must consider the assistance requirements of the passengers, the relative journey times involved, the accessibility of the rolling stock and stations that may be used and the planned staffing levels on board the train and at the station, including the potential for the flexible deployment</p>	<p>A4 Rail replacement services and alternative accessible transport</p> <p>[Section A4 does not apply to Network Rail]</p> <p>A4.1 Operators must ensure that passengers who require assistance are able to make as much of their journey by rail as possible. However, there are circumstances under which substitute transport is provided to replace rail.</p> <p>A4.2 The Public Service Vehicle Accessibility Regulations (PSVAR) require that public service vehicles (PSVs) must either be compliant with the (PSVAR), or be operated under special authorisation pursuant to s.178 of the Equality Act 2010.²²</p>
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²⁰ Noting the duty of operators under the Equality Act 2010 to provide reasonable adjustments

²² N.B. ORR has published online legal advice on the applicability of PSVAR when PSVs are used as substitute transport for rail: https://orr.gov.uk/data/assets/pdf_file/0003/42483/accessible-travel-policy-rail-

<p>of staff to the station, in order to ensure that the full range of options can be considered. Operators must, where reasonably practicable, offer an option that most resembles the service provided to passengers not requiring assistance.</p> <p>A4.2 For the circumstances under which alternative accessible transport is offered, operators must therefore set out how they will provide, without extra charge, an appropriate alternative accessible service to take disabled passengers to the nearest or most convenient accessible station from where they can continue their journey:</p> <ol style="list-style-type: none"> a. where a disabled passenger or passenger with reduced mobility is unable to travel from a station because the station is inaccessible to them (e.g. because of a physical constraint); b. where, for whatever reason, substitute transport is provided to replace rail (e.g. because of planned engineering works, industrial action or a replacement timetable) that is inaccessible to disabled passengers; c. where there is disruption to services at short notice that, for whatever reason, makes services inaccessible to disabled passengers. 	<p>A4.3 Operators must set out how they will take appropriate steps to procure, through explicit requirements in tenders for contracts with vehicle suppliers, the use of accessible PSVs that are compliant with PSVAR and alternative accessible vehicles for use where, for whatever reason, substitute transport is provided to replace rail (e.g. because of planned engineering works, industrial action or a replacement timetable).</p> <p>A4.4 Such contracts must be reviewed annually to consider any changes in the availability of accessible vehicles.</p> <p>A4.5 At least 12 weeks before all major planned engineering works²³, operators must take appropriate steps to</p> <ul style="list-style-type: none"> - assess the requirement for accessible PSVs that are compliant with PSVAR and alternative accessible vehicles for use as substitute transport; and - where necessary, procure the use of such vehicles. <p>A4.6 There are additional circumstances under which alternative accessible transport must be offered instead of rail. Operators must consider the assistance requirements of the passengers, the relative journey times involved, the accessibility of the rolling stock and stations that may be used and the planned staffing levels on board the train and at the station, including the potential for the flexible</p>
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[replacement-services-final-legal-advice-2020-02-06.pdf](#) Compliance with and enforcement of PSVAR is a matter for DVSA.

²³ Defined as Network Rail works that require restrictions of use and timetable variations with at least 12 weeks' notice, as set out in Part D of the Network Code: <https://www.networkrail.co.uk/industry-and-commercial/information-for-operators/network-code/>

<p>A4.3 Standards and guidance on the provision of substitute transport (both pre-planned and emergency) are provided in section B1 of the Joint Code of Practice.²¹</p>	<p>deployment of staff to the station, in order to ensure that the full range of options can be considered. Operators must, where reasonably practicable, offer an option that most resembles the service provided to passengers not requiring assistance and, during all major planned engineering works, ensure waiting times for alternative accessible transport are similar to those for PSVs.</p>
<p>A4.4 For transparency, operators may indicate what alternative accessible transport is usually provided - noting that, when providing taxis for disabled people, this will not always require an 'accessible' taxi. The need for 'accessible' taxis will depend on the specific needs of the individual passenger, which should be discussed with the passenger before taxis are arranged.</p>	<p>A4.7 For the circumstances under which alternative accessible transport is offered, operators must therefore set out how they will provide, without extra charge, an appropriate alternative accessible service to take disabled passengers to the nearest or most convenient accessible station from where they can continue their journey. In setting this out, operators will have regard to the anticipatory nature of the duty to provide reasonable adjustments under the Equality Act 2010. These circumstances are:</p> <ol style="list-style-type: none"> a. where a disabled passenger or passenger with reduced mobility is unable to travel from a station because the station is inaccessible to them (e.g. because of a physical constraint); b. where a disabled passenger or passenger with reduced mobility is unable to travel from a station because the rolling stock is inaccessible to them (e.g. because of a physical constraint); c. where, for whatever reason, substitute transport that is inaccessible to disabled passengers is provided to replace rail (e.g. because of

²¹ See **Section 248** of Transport Act 2000

	<p>planned engineering works, industrial action or a replacement timetable); where there is disruption to services at short notice that, for whatever reason, makes services inaccessible to disabled passengers.</p> <p>A4.8 Standards and guidance on the provision of substitute transport (both pre-planned and emergency) are provided in section B1 of the Joint Code of Practice.²⁴</p> <p>A4.9 For transparency, operators may indicate what alternative accessible transport is usually provided - noting that, when providing taxis for disabled people, this will not always require an 'accessible' taxi. The need for 'accessible' taxis will depend on the specific needs of the individual passenger, which should be discussed with the passenger before taxis are arranged.</p>
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Explanation: These changes highlight the duty of operators to provide reasonable adjustments to disabled passengers during disruption, and clarify that the Public Service Vehicle Accessibility Regulations (PSVAR) apply to buses and coaches used in rail replacement services. Compliance with PSVAR will continue to be monitored and enforced by DVSA. Because of the shortage of accessible coaches for use on longer routes, the Rail Minister has allowed bus and coach operators to apply for exemptions from the Regulations until the end of December 2020. However, we have introduced a new requirement that operators must nonetheless endeavour to get hold of as many accessible, compliant vehicles (which may be coached, buses, minibuses taxis or any other accessible vehicle that allows passengers to travel in comfort and safety) as possible for use where they may be needed to provide substitute transport during disruption, with a particular focus on large-scale planned engineering works. As part of this, the contracts operators have with suppliers must be reviewed on an annual basis to consider whether there is the opportunity to procure the use of additional accessible vehicles. We expect this to increase the utilisation of the pool of available accessible vehicles.

²⁴ See **Section 248** of Transport Act 2000

A6 Delays, disruption to facilities and services, and emergencies	A6 Delays, disruption to facilities and services, and emergencies
<p>A6.1 Disruption to facilities and services can have a significant impact on both the accessibility of rail services to persons with reduced mobility and the confidence of disabled people and other passengers with reduced mobility in travelling on the railway. Where disruption does occur, operators must do everything possible to ensure that, wherever possible, passengers are able to continue their journey and are not left stranded.</p>	<p>A6.1 Disruption to facilities and services can have a significant impact on both the accessibility of rail services to persons with reduced mobility and the confidence of disabled people and other passengers with reduced mobility in travelling on the railway. Where disruption does occur, operators must do everything possible to ensure that, wherever possible, passengers are able to continue their journey and are not left stranded.</p>
<p>A6.2 The accessibility requirements for buses and taxis are set out in separate legislation to that referenced in section 1.3 of this guidance; the accessibility of these services is neither monitored nor regulated by ORR. However, operators must set out how, in cases of planned disruptions, they will make reasonable endeavours to secure accessible rail replacement services and taxis. For operators that are unable to secure accessible vehicles that are appropriate for the routes they would be used on, the operator must set out why this is the case.</p>	<p>A6.2 Operators must provide details of relevant policies and operational arrangements for meeting the needs of disabled passengers when dealing with the breakdown of facilities and services that can affect access to passenger trains and stations.</p>
<p>A6.3 Operators must provide details of relevant policies and operational arrangements for meeting the needs of disabled passengers when dealing with the breakdown of facilities and services that can affect access to passenger trains and stations.</p>	<p>A6.3 This must include details of the operator's policy with regard to assisting disabled people in making connections when trains are re-platformed at short notice, as well as information on policies and procedures relating to the provision of accessible substitute transport. Where substitute transport is inaccessible to some disabled people, alternative arrangements must be made, as set out at A4.</p>
<p>A6.4 This must include details of the operator's policy with regard to assisting disabled people in making connections when trains are re-platformed at short notice, as well</p>	<p>A6.4 Where passengers have booked assistance in advance through Passenger Assist that, because of service disruption, is no longer valid, operators must set out how they will contact those passengers to provide information on the use of rail replacement services, discuss the individual needs and preferences of those passenger and make appropriate alternative arrangements</p>

<p>as information on policies and procedures relating to the provision of accessible substitute transport. Where substitute transport is inaccessible to some disabled people, alternative arrangements must be made, as set out at A4.</p> <p>A6.5 Where passengers have booked assistance in advance through Passenger Assist that, because of service disruption, is no longer valid, operators must set out how they will contact passengers and make alternative arrangements (such as re-booking assistance). Operators must also provide details of arrangements for assisting disabled people when disruption occurs with no advance warning.</p> <p>A6.6 Operators must set how they will make reasonable efforts to provide, wherever possible, reasonable replacement facilities that are accessible when the level of accessibility of facilities at a station is less than that normally provided (e.g. as a result of the breakdown, alteration or removal of facilities).²⁵ Guidance on provision of information during disruption is set out in section A2.3.</p> <p>A6.7 Operators must also set out how they will ensure assistance is provided to disabled people at stations and on trains in the event of an emergency, including any relevant training given to staff.#</p> <p>A6.8 Operators are not expected to provide details about their plans for dealing with a range of specific emergencies.</p>	<p>(such as re-booking assistance). Operators must also provide details of arrangements for assisting disabled people when disruption occurs with no advance warning.</p> <p>A6.5 Operators must set how they will make reasonable efforts to provide, wherever possible, reasonable replacement facilities that are accessible when the level of accessibility of facilities at a station is less than that normally provided (e.g. as a result of the breakdown, alteration or removal of facilities).²⁶ Guidance on provision of information during disruption is set out in section A2.3.</p> <p>A6.6 Operators must also set out how they will ensure assistance is provided to disabled people at stations and on trains in the event of an emergency, including any relevant training given to staff.</p> <p>A6.7 Operators are not expected to provide details about their plans for dealing with a range of specific emergencies.</p>
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²⁵ Noting the duty of operators under the Equality Act 2010 to provide reasonable adjustments

²⁶ Noting the duty of operators under the Equality Act 2010 to provide reasonable adjustments

Explanation: New rail replacement requirements are set in section A4 of the guidance. These replace the previous requirements set out in A6.2. Additional text is added into the revised paragraph A6.4 to mirror the text in A2.3.1c.

Other updates

July 2019	September 2020
<p>A1 Booking and providing assistance to passengers</p> <p>e. where assistance is to be provided by station-based staff, in order that staff at the boarding station are able to ensure that the passenger will be met by a member of staff at the alighting station, by June 2020 provide a dedicated telephone number and a member of staff responsible for receiving calls²⁷ from staff for every station that the operator manages; this number must be made available to staff at all staffed stations. All operators must follow the Handover Protocol set out at Appendix C when deciding whether to call ahead. This does not apply where ORR has agreed an alternative technology may be used by the operator to pass information between staff to ensure assistance is provided at the alighting station;</p>	<p>A1 Booking and providing assistance to passengers</p> <p>e. Where assistance is to be provided by station-based staff, in order that staff at the boarding station are able to ensure that the passenger will be met by a member of staff at the alighting station, operators must provide a dedicated telephone number and a member of staff responsible for receiving calls from staff, for every station that the operator manages; assistance staff must also follow the handover protocol where it applies. In meeting these requirements all operators must follow the passenger assistance handover protocol technical guidance set out at Appendix C; this technical guidance does not apply where ORR has agreed an alternative process or technology, with equivalent functionality and effectiveness, may be used by the Operator.</p>

²⁷ Each station must have a phone number allocated for the communication of assistance information. This number must be made available to all relevant staff at stations and on-board trains, who may need to communicate with the station regarding passenger assistance. The phone used must be capable of recording when calls are made and received, to enable the operator to audit communication as required. The operator must ensure that there is a rostered duty to answer this phone at all times trains are running. At unstaffed stations, and at times when part-staffed stations are unstaffed, the phone may be answered by someone who is not present at the station, but is in a position to co-ordinate the delivery of assistance as required.'

<p>Explanation: We have published in Appendix C detailed technical guidance on the passenger assistance handover protocol that operators must follow to ensure alighting assistance is provided reliably. The changes in this section align with that detailed Guidance.</p>	
<p>A2 Passenger information and promotion of Assisted Travel</p> <p>A2.2.2 Rolling stock and stations accessibility information must be kept up-to-date and made available to passengers:</p> <ul style="list-style-type: none"> • online, in a format that can easily be accessed using a personal mobile device • online as a PDF that is accessible using screen readers or other software with accessibility features, such as Adobe Reader; and • in alternative formats, including print and audio, on request within seven working days. 	<p>A2 Passenger information and promotion of Assisted Travel</p> <p>A2.2.2 Rolling stock and stations accessibility information must be kept up-to-date and made available to passengers:</p> <ul style="list-style-type: none"> • online, in a format that can easily be accessed using a personal mobile device • in alternative formats, including print and audio, on request within seven working days. <p>This information may also be provided online as a PDF that is accessible using screen readers or other software with accessibility features, such as Adobe Reader.</p>
<p>Explanation: In line with Government guidance on accessible online publishing, we have already agreed with train and station operators that HTML is an acceptable accessible alternative to an accessible pdf. We therefore no longer require that pdfs of station and rolling stock accessibility information are provided online if this information is available in HTML.</p>	
<p>A8 Redress</p> <p>A8.4 Nothing in this section is intended to affect the obligations of operators to provide redress under the Consumer Rights Act 2015, or the Equality Act</p>	<p>A8 Redress</p> <p>A8.4 Nothing in this section is intended to diminish or remove the obligations that operators have to passengers under relevant legislation, including the Consumer Rights Act 2015, the Rail</p>

2010, or EC1371/2007. (See section A3).	Passengers Rights and Obligations Regulations or the Equality Act 2010. ²⁸
Explanation: These changes reinforce that passengers have a number of different means by which they are able to exercise their rights when, for whatever reason, they are dissatisfied with the service they receive. This may include when buses, coaches or alternative transport is used as a substitute for rail during disruption.	

²⁸ via the Equality Advice and Support Service