



Accessible Travel Policy Guidance - accessibility of rail replacement services: a consultation

20 December 2019

Contents



Executive summary	4
ORR's statutory duties.....	5
Public Service Vehicle Accessibility Regulations 2000 (PSVAR)	6
Availability and use of PSVAR-compliant vehicles	7
The Accessible Travel Policy Guidance	9
Next steps	12
Background	13
ORR's role.....	13
Review of Accessible Travel Policy Guidance	13
Requirements in new Accessible Travel Policy Guidance for accessible rail replacement services.....	14
Public Service Vehicle Accessibility Regulations 2000.....	15
Accessible Travel Policy Guidance for accessible rail replacement services - post publication review	16
Scope of this document.....	16
Responding to this consultation.....	17
Next steps	18
1. Chapter one: Rail replacement services - information from train operators and other parties	19
Summary.....	19
Introduction.....	19
Request for data from train operators.....	19
Narrative responses from train operators to the data request	24
Other data sources	25
2. Chapter two: The applicability of the Public Service Vehicle Accessibility Regulations 2000 (PSVAR) to rail replacement services	26
Summary.....	26
Introduction.....	26
ORR's provisional legal advice	27
Responses from interested parties	28
Responses on ORR's legal advice	28

Comments from respondents on the applicability of PSVAR to rail replacement services	29
<i>Bus and coach availability</i>	29
<i>Passenger safety</i>	31
<i>Passengers without mobility needs</i>	31
<i>Engineering works</i>	32
<i>Station infrastructure</i>	32
<i>Operational issues</i>	33
<i>Potential improvements</i>	33
3. Chapter three: Consideration of revised requirements in Accessible Travel Policy Guidance for accessible rail replacement services	34
Summary	34
Introduction	34
Legislative and contractual framework	34
ORR consideration of Accessible Travel Policy Guidance for rail replacement services	38
Availability of PSVAR-compliant vehicles	39
Effects on passengers	41
Effects on Network Rail’s planned work	43
Proposals for amending Accessible Travel Policy Guidance	44
ORR’s monitoring approach	49
Summary of consultation questions	50

Executive summary

1. Access to public transport is for many a necessity of everyday life. We recognise the importance of the rail network being open to everyone. Our vision is to empower confident use of the railway by all. Following an extensive consultation process, on 27 July 2019 we published revised Accessible Travel Policy (ATP formerly known as Disabled People's Protection Policy (DPPP)) Guidance¹ designed to deliver this vision.
2. In developing the revised ATP Guidance we sought views on proposals to improve the accessibility of substitute and alternative transport (rail replacement services) provided by train operators during planned and unplanned disruption. This culminated in the inclusion in the Guidance of a new requirement to set out how, in cases of planned disruption, train operators will make reasonable endeavours to secure accessible rail replacement services, and where they are unable to do so to set out why.
3. Following publication of the Guidance, ORR received a challenge on behalf of an individual that caused us to re-consider this position. One particular issue raised was the decision by ORR not to make it a mandatory requirement for all new ATPs to provide for accessible rail replacement buses where disruption is planned or reasonably foreseeable. 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 2000 (PSVAR)².
4. The PSVAR reflects 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. ORR recognises the role of accessible rail replacement services in terms of eliminating discrimination against disabled people and in advancing equality of opportunity for this cohort. Ensuring that public transport is accessible to all is an important way of fostering the inclusion of disabled people in everyday life.

¹ https://orr.gov.uk/data/assets/pdf_file/0018/41517/accessible-travel-policy-guidance-for-train-and-station-operators.pdf

² <http://www.legislation.gov.uk/uksi/2000/1970/contents/made>

ORR's statutory duties

5. How ORR exercises its functions is governed by various statutory duties that we must take into account when making decisions. Different duties apply depending on whether ORR is exercising its economic or safety functions. ORR must take the regulatory approach it considers appropriate, bearing in mind all our competing duties and considerations, and having due regard to our equalities obligations. Our economic duties as set out in section 4 of the Railways Act 1993 are set out more fully in chapter 3, but in summary they include:
 - to protect the interests of users of railway services;
 - to promote efficiency and economy on the part of persons providing railway services;
 - to have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public; and
 - to have regard, in particular, to the interests of persons who are disabled in relation to services for the carriage of passengers by railway or to station services.
6. ORR has powers to take enforcement action under licences we have granted to train operators where they have breached their obligations; we apply prioritisation criteria to help us focus our resource and priorities.
7. ORR also has safety duties that could, for example, require us to ensure that train operators consider any potential impact on passengers and railway staff of the use or changes in the provision of rail replacement services.
8. We also have an equalities duty under section 149 of the Equality Act 2010, which requires us to have due regard to the need to - amongst other things - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Public Service Vehicle Accessibility Regulations 2000 (PSVAR)

9. Enforcing compliance with PSVAR is not one of ORR's statutory duties. The Department for Transport (DfT) provides the Driver and Vehicle Standards Agency (the "DVSA") with a specific fund to enforce the requirements outlined in the PSVAR. Non-compliance with PSVAR is a criminal offence (under Section 175 of the Equality Act 2010) and carries a fine not exceeding Level 4 on the standard scale (currently £2,500).
10. To inform our re-consideration we sought legal advice on the applicability of the PSVAR to rail replacement services. This requires all single and double deck buses to hold accessibility certificates, certifying that they comply with specific accessibility criteria. From 1 January 2020 this will apply to all coaches too. Our provisional legal advice³ concluded that buses and coaches used for rail replacement services were required to comply with PSVAR if they were providing a 'local'⁴ or 'scheduled'⁵ service unless the vehicle is exempt⁶ or special authorisation⁷ to use a vehicle which does not comply with accessibility regulations has been granted by the Secretary of State. For example, DfT has recently written to all local authorities and schools and colleges which commission their own services, to offer an initial two years extension from PSVAR for vehicles providing home to school transport, on which up to twenty percent of seats are sold. More recently, the Rail Minister has granted a one-month extension for the period from the requirements of PSVAR from 1 January 2020 to 31 January 2020.⁸
11. We published, and asked for comments on, the provisional legal advice, and sought information from train operators and others on the accessibility of buses and coaches used, and available, for rail replacement.

³ https://orr.gov.uk/_data/assets/pdf_file/0005/41864/accessible-travel-policy-rail-replacement-services-full-legal-advice-2019-09-30.pdf

⁴ For a service to be local, the key point is that all its stops must be less than 15 miles apart. So, long-distance services where all stops are 15 miles or more apart will not be 'local'.

⁵ Many rail replacement services will be 'scheduled' because they have scheduled stops, routes and times.

⁶ There is an exemption for services provided by vehicles which are 20 years old and which are only used for that purpose less than 20 days a year.

⁷ Under 178 of the Equality Act 2010 the Secretary of State may authorise, by means of a special authorisation order, the use of a regulated public service vehicle which does not comply with accessibility regulations.

⁸

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

12. We received a number of responses (predominantly from train operators) to our request for comments on this legal advice; a small number of those responses advanced arguments against that legal advice, and we considered these when finalising our advice. The final legal advice confirms the position set out in the provisional advice (as set out above) and will be published separately in due course.

Availability and use of PSVAR-compliant vehicles

13. The majority of responses to the provisional legal advice focused on the availability of rail replacement services and the implications of applying PSVAR to rail replacement services. In addition to this we have gathered separate information from operators to assess the current availability and use of PSVAR-compliant vehicles for rail replacement services. This information demonstrates that whilst the vast majority of buses used for rail replacement are accessible (for example low floors with ramps for wheelchair users), the opposite is true of coaches (where a wheelchair lift is required); of more than 55,000 coaches used over the last year (predominantly by long-distance operators) only 175 were PSVAR-compliant. Over the year⁹, the average number of coaches used per rail period was over 4,400. Whilst we do not know how many passengers used rail replacement services, one long-distance operator indicated in its response that nearly 125,000 customers used its rail replacement services. As this operator accounts for around 2% of rail replacement journeys, the potential number of passengers using rail replacement is likely to be very high.
14. Information from the Confederation of Passenger Transport¹⁰ (CPT) estimates that there are around 600 accessible coaches in the UK potentially available for rail replacement work but this is dependent on their geographical location and existing commitments. The ability of these coaches to accommodate all types of wheelchairs and scooters also varies.
15. Responses from train operators highlighted the lack of available PSVAR-compliant vehicles in the bus and coach market, which is particularly acute in rural areas. They questioned whether there are sufficient incentives on bus and coach suppliers to invest in PSVAR-compliant coaches to meet what they suggest is limited demand in terms of their overall business model. Nonetheless, it was clear from responses that most train operators do not include requirements for the provision of PSVAR-compliant vehicles in either their contract tender documents or the contracts themselves. Some operators commented that, if they are required to only operate PSVAR-compliant vehicles, the lack or limited availability of PSVAR-compliant

⁹ 12 months 19/8/18 – 17/8/19

¹⁰ <http://www.cpt-uk.org/index.php?fuseaction=aboutus.main>

vehicles may impact on their ability to accommodate Network Rail's programme of planned engineering designed to increase maintain and improve infrastructure.

16. There was also the suggestion from a number of operators that the low number of PSVAR-compliant vehicles would mean that they would either be unable to provide PSVAR-compliant rail replacement services or only be able to provide a limited number of them. They added that this would impact on all passengers including those disabled passengers without mobility needs, and create potential safety issues where if large numbers of passengers were unable to travel for lengthy periods of time whilst waiting for a suitable vehicle. The safety and security of rail passengers is a key consideration for the industry, and ORR has its own safety duties to ensure that train operators consider the impact on safety of passengers and staff in their use of rail replacement services.
17. Finally, the suitability of PSVAR-compliant vehicles in some circumstances was highlighted. In particular, train operators noted the unsuitability of PSVAR-compliant vehicles where the station infrastructure is unable to accommodate PSVAR-compliant bus and coach stops, and the use of PSVAR-compliant buses on long-distance routes where the lack of seat belts and luggage storage may create safety issues, and may be less comfortable and lack of toilet facilities.
18. Securing vehicles which are compliant with PSVAR will therefore be a challenge for train operators given this lack of availability in the market, and this will be exacerbated during times of unplanned disruption. Those operators who choose to run non PSVAR-compliant vehicles may be at risk of committing a criminal offence¹¹.
19. These are not new requirements; whilst the obligation to run PSVAR-compliant services was expected to commence for coaches from 1 January 2020, the legislation has been in place for a number of years and should be well known to train operators. As such, they should have been preparing in advance to meet the requirements of PSVAR and working with suppliers of rail replacement vehicles accordingly. We note that in granting a one-month extension for the period from 1 January 2020 to 31 January 2020 from the requirements of PSVAR, the Rail Minister has noted the significant period of time the rail industry has had to prepare.
20. Irrespective of this, the coach market will likely respond to meet the requirements of PVSAR over time if the demand is forthcoming; ORR, DfT, and Rail Delivery Group (RDG) on behalf of train operators as well as operators themselves through contractual arrangements, all have a role to play in pushing this forward. Increasing the use of PSVAR-compliant buses may be a partial solution until there is a sufficient

¹¹ Under section 175 of the Equality Act 2010

number of coaches, although their suitability for long-distance travel (a lack of toilet facilities, seat belts, and luggage areas) requires further consideration. We will be asking train operators to provide evidence of how they intend to prioritise the available accessible coaches to maximise the opportunities for passengers to make journeys on PSVAR-compliant vehicles and, in relation to PSVAR, we will consider what metrics to collect to monitor performance.

21. Bearing in mind the number of passengers potentially using rail replacement services, it is not clear how it would be in passengers' interests or even in the interests of disabled passengers generally to narrow their ability and options to travel, particularly when our research¹² suggests that there are disabled passengers who do not require access to a compliant vehicle to travel. There may also be occasions when a disabled passenger may prefer to use a taxi and it is important that train operators remain able respond to these customers' individual needs and choices. The information provided by one operator about the number of passengers using its rail replacement services (noted above) suggests that potentially millions of journeys may be impacted.

The Accessible Travel Policy Guidance

22. Our role here is to consider how train operators should enable passengers to make journeys using accessible transport, with a view to advancing equality of opportunity for disabled people. With this in mind, our preferred approach is to amend the ATP Guidance to influence train operators' behaviour to encourage and support the greater availability and use of PSVAR-compliant vehicles in rail replacement services.
23. It is not ORR's role to enforce PSVAR, breach of which is a criminal offence enforced by DVSA. Having regard to our statutory duties, our current view is that mandating compliance with PSVAR in the ATP Guidance would be likely to lead to a substantial reduction, and possibly even cessation, of rail replacement services in some cases. We consider that this may lead to a substantial worsening of the position for all passengers, including disabled passengers.
24. We recognise that this may yet be the effect of train operators' consideration of PSVAR and the potential criminal implications which flow from it. We are also concerned that this would introduce the potential risk of double jeopardy for operators, which we do not consider appropriate. Overall, we are not minded, having

¹² Experiences of Passenger Assist research by Breaking Blue 2018/19 – to be published w/c 6 January 2020

weighed the various competing duties to which we are subject, to mandate that obligation in the ATP Guidance.

25. We have instead set out below proposals on which we now seek views as to how we could enhance the ATP Guidance to encourage and support the greater availability and use of PSVAR-compliant vehicles in rail replacement services. These proposals could be adopted on their own or in combination, and we will consider what information we will need to collect to monitor their success. The proposals focus on incentivising improvements for planned disruption. Unplanned disruption is, by its nature, unpredictable, and we do not think there are specific incentives for it. Nonetheless, the incentives we have proposed for planned disruption (and therefore the increased numbers of PSVAR-compliant vehicles over time) would have effect on the market available for unplanned disruption as well.

Proposal one

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

26. This proposal acknowledges the current availability of PSVAR-compliant vehicles is limited and without a stronger incentive to do so, vehicle suppliers may have no commercial reasons to invest in such. In our view, placing obligations on train operators to use their contractual arrangements with vehicle suppliers may be one way in which to increase demand and stimulate the market to respond. We will expect to see evidence that operators are using contractual processes to increase the availability of accessible vehicles.

Proposal two

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.

27. This proposal makes the distinction between planned disruption where more time is available to source PSVAR-compliant vehicles and unplanned disruption where the opposite is usually the case. We would expect train operators to recognise the need to proactively source and manage rail replacement at an early stage so that appropriate vehicles can be sourced and where demand outstrips supply alternative measures can be considered (e.g. increased use of buses or accessible taxis in some circumstances). We have proposed 12 weeks as this is the point at which timetables should be finalised but it may be that a much longer time-period is more appropriate given that Network Rail blockades are planned a significant time in advance.

Proposal three

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).

28. This proposal recognises the challenges faced by train operators in being able to source available PSVAR-compliant vehicles and has the potential to meet the needs of individual passengers more appropriately. However, such a requirement would only help those passengers who have booked assistance in advance of travel.
29. This proposal builds on the existing commitment in Section 4, para A2.3.1c of the ATP Guidance, which indicates that train operators must contact passengers that have booked assistance when there is service disruption, to inform them and discuss alternatives. They must also set out how they would inform passengers on board trains and at stations, whether they have booked assistance or not.

Proposal four

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.

30. This requirement would assist passengers when planning their journeys. Train operators would be required to give information on both their own and National Rail enquiries websites about the accessible replacement services they will be providing and the options available to the passenger to be able to make their journey. The existing generic information provided by train operators on posters and leaflets would be enhanced to provide advice on where detailed information about rail replacement services can be obtained.
31. This proposal builds on the existing commitment in Section 4, para A2.3.1c of the ATP Guidance to inform passengers when there is a change to rolling stock accessibility.

Proposal five

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).

32. This proposal may improve the ability for operators to identify times and locations of high demand so that the available vehicles are deployed as effectively as possible to meet passenger demand. This arrangement would depend on the willingness of operators to work together in conjunction with vehicle suppliers – who have competing commercial interest – to make the most effective use of resources.

Next steps

33. The proposals set out above are discussed further in the following sections of this document.
34. We are grateful for the constructive and detailed information and responses provided to date, these have been helpful in drafting this re-consultation, but we recognise that there may be further information of which we are unaware and other interested parties who may now wish to respond.
35. In chapter three we set out questions, and seek further information and comments on these proposals by **14 February 2020**. Following consideration of responses we will publish a report setting out of conclusions and any changes we intend to make to the ATP Guidance.

Background

ORR's role

36. ORR must exercise our functions under the Railways Act 1993 in the manner which we consider best calculated to achieve a range of (potentially) competing interests. These duties, and those interests, are set out in section 4 of the Act, and we must balance them as we consider appropriate. The duties include having regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public. In addition, we must have regard, in particular, to the interests of persons who are disabled in relation to services for the carriage of passengers by railway or to station services. We set out our duties in greater detail in chapter three.
37. We also have a key duty under the Equality Act 2010. Section 149 is a duty to have regard to the need to eliminate unlawful discrimination and advance equality of opportunity (among other things).
38. We have already included a licence obligation within operators' licences¹³ requiring them to establish and comply with an ATP. We publish Guidance for rail operators on how they should write their ATP. The Guidance sets out what commitments are expected from them, and the information they need to provide in the ATP. It sets out the minimum requirements for rail operators which we would expect they will seek to exceed.
39. Relevant to this subject matter, ORR's role is to approve, and monitor compliance with, mainline train and station operators' policies on accessibility. We approve rail operators' ATPs against our published ATP Guidance. We can also require operators to review their policies and to make changes to these or the manner in which they are implemented. More widely, we collect, monitor and publish information on rail industry performance on accessibility.

Review of Accessible Travel Policy Guidance

40. In 2017 we published the results of our extensive research into passenger experience and awareness of Assisted Travel, and consulted on the key areas identified in the research where improvement was needed. In November 2018 we

¹³ Licence condition 5 Accessible Travel Policy https://orr.gov.uk/_data/assets/pdf_file/0011/2234/lic-passlic.pdf

published our consultation¹⁴ seeking views on proposals to amend the DPPP Guidance published in 2009 by DfT.

41. In developing our November 2018 proposals we engaged extensively with a wide range of stakeholders. This engagement included: establishing and meeting with an Assisted Travel Advisory Group of experts; workshops with disability groups, train operators, and all stakeholders; and specific meetings with industry stakeholders (RDG, train operators, Network Rail, Disabled Persons' Transport Advisory Committee (DPTAC) and an assistance user/accessibility consultant). We also held a number of individual meetings with disabled people's organisations, charities and campaigning groups to understand the issues they face, as well as with operators and industry organisations to better understand the impacts of our proposals on their businesses.
42. This extensive consultation and engagement culminated in the publication of the revised ATP Guidance on 27 July 2019¹⁵. Alongside this we also published an Equality Impact Assessment and a Regulatory Impact Assessment.

Requirements in new Accessible Travel Policy Guidance for accessible rail replacement services

43. The 2009 DPPP Guidance¹⁶ did not impose any requirements on train operators to ensure that buses and coaches are accessible. Therefore, as part of our ATP Guidance consultation process we sought views about methods to improve the accessibility of substitute and alternative transport provided by operators. We received a number of responses on the issue of rail replacement services which we encapsulated in our summary of consultation responses also published on 27 July 2019¹⁷. In that document we acknowledged the potential difficulties caused to some passengers when a suitable accessible alternative to rail cannot be provided.
44. In the final Guidance we required operators to set out how, in cases of planned disruptions, they will make reasonable endeavours to secure accessible rail replacement services. For operators that are unable to secure accessible vehicles

¹⁴ https://orr.gov.uk/_data/assets/pdf_file/0004/39676/improving-assisted-travel-consultation-november-2018.pdf

¹⁵ https://orr.gov.uk/_data/assets/pdf_file/0018/41517/accessible-travel-policy-guidance-for-train-and-station-operators.pdf

¹⁶ <https://webarchive.nationalarchives.gov.uk/20120607140807/http://www.dft.gov.uk/publications/how-to-write-your-disabled-people-s-protection-policy>

¹⁷ https://orr.gov.uk/_data/assets/pdf_file/0012/41520/improving-assisted-travel-summary-of-consultation-responses-and-orr-response-july-2019.pdf

that are appropriate for the routes they would be used on, we required the operator to set out why this is the case¹⁸.

Public Service Vehicle Accessibility Regulations 2000

45. The Disability Discrimination Act 1995 enabled the Secretary of State to make regulations with a view to facilitating the accessibility of, amongst others, public service vehicles for disabled people, and Section 174 of the Equality Act 2010 continues that. The Public Service Vehicle Accessibility Regulations 2000 (PSVAR)¹⁹ originates from that. PSVAR imposes requirements for securing that it is possible for disabled persons to get on and off regulated public service vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs), and to travel in such vehicles in safety and reasonable comfort. A “public service vehicle” means a vehicle which is adapted to carry more than 8 passengers, and which is a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981²⁰.
46. The Regulations require all “regulated public service vehicles” to have an “accessibility certificate”²¹. The certificate’s requirements cover such matters as wheelchair spaces, boarding lifts and ramps, entrances and exits, gangways, communication devices and lighting.
47. All single and double deck buses “in use” as at today’s date are required to have accessibility certificates i.e. to comply with the Regulations. From 1 January 2020, all single or double deck coaches “in use” will also be required to have a certificate; many newer coaches are already covered, but the exemptions for older coaches previously in place will expire as at that date.
48. “in use” means that the regulated public service vehicle is being used to provide either a “local service” or a “scheduled service”. There is an exemption for vehicles first used 20 years ago, which are not used to provide a local or scheduled service for more than 20 days in any calendar year.

¹⁸ Paragraph A6.2

¹⁹ <http://www.legislation.gov.uk/ukxi/2000/1970/contents/made>

²⁰ Public Passenger Vehicles Act 1981 s 1(1)(a): a vehicle adapted to carry more than 8 passengers...used for hire or reward.

²¹ A certificate which signifies compliance with the relevant accessibility requirements set out in the applicable Schedules, and issued in accordance with Parts III to VI of the Regulations.

49. Compliance with PSVAR is monitored and enforced by the DVSA. The Government's Inclusive Transport Strategy²² notes a commitment to undertake a review of the continued efficacy of PSVAR by 2028. The Strategy advises passengers who believe a bus or coach which is subject to PSVAR does not comply with its requirements to report their concerns to DVSA for further investigation.

Accessible Travel Policy Guidance for accessible rail replacement services - post publication review

50. Following publication of the Guidance, ORR received a challenge on behalf of an individual that caused us to re-consider the position in relation to the accessibility of rail replacement services. One particular issue raised was the decision by ORR not to make it a mandatory requirement for all new ATPs to provide for accessible rail replacement buses where disruption is planned or reasonably foreseeable. 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 PSVAR.
51. To inform our reconsideration of this issue we sought legal advice regarding the applicability of the PSVAR to rail replacement services. We published this advice on our website on 30 September²³ and sought comments from interested parties.
52. We also sought further data from train operators on the accessibility of buses and coaches they have used over the past 12 months on their rail replacement services. This included asking operators to provide detailed quantitative and qualitative information on the provision, deployment and usage of rail replacement bus and coach services during both planned and unplanned disruption to better understand the extent to which PSVAR-compliant vehicles are used.

Scope of this document

53. In this document we set out in:
- chapter one - information gathered from train operators and other parties on the accessibility of buses and coaches;

²²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728547/inclusive-transport-strategy.pdf

²³ https://orr.gov.uk/_data/assets/pdf_file/0007/41866/accessible-travel-policy-rail-replacement-services-stakeholder-letter-2019-09-30.pdf

- chapter two - summary of responses following publication of ORR’s provisional legal advice on the applicability of PSVAR; and
 - chapter three - consideration of revised requirements in ATP Guidance for accessible rail replacement services.
54. We will publish our final ORR legal advice on the applicability of PSVAR in due course²⁴. We have also prepared a draft equality and regulatory impact assessment as part of this process, which is available to view along with this consultation. Where relevant, the responses to the consultation will be factored into our final equality and regulatory impact assessment.
55. We will publish a draft addendum to the published equality and regulatory impact assessment alongside the revised ATP Guidance.

Responding to this consultation

56. Please provide your response by **14 February 2020** in writing or by e-mail to:

Consumer Policy Team
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

E-mail: ATP@orr.gov.uk

Please note our change of postal address since the previous ATP consultation took place.

57. 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.
58. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document.
59. A Large Print version of this document is available on our website; an Easy Read version will be available early in the New Year. If you need conversion into any other accessible formats please contact us at: ATP@orr.gov.uk

²⁴ Although the position is settled, we have not been able to produce a final document for publication at this time. We will publish it as soon as possible in the New Year.

60. We plan to publish all responses to this re-consultation on our website. Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes.
61. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
62. If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Next steps

63. Following consideration of responses we will publish a report explaining our conclusions and identifying what, if any, revisions to the requirements in ATP Guidance for accessible rail replacement services we have made.
64. Train operators are currently submitting their ATPs to ORR. As the requirements in the ATP Guidance for rail replacement will still be subject to re-consultation during the ATP approval process, ORR has, in approving ATPs, made clear that this section of operators' ATPs may be subject to further amendments, and will continue to do so as the remaining ATPs are approved. Nonetheless, ORR will expect operators to explain what action is being taken in the meantime.

1. Chapter one: Rail replacement services - information from train operators and other parties

Summary

In this chapter we set out a summary of the responses from train operators to our request for information of 28 August 2019 on the accessibility of buses and coaches used for rail replacement services.

Introduction

- 1.1 We requested data from train operators on the accessibility of buses and coaches they have used over the past 12 months on their rail replacement services. This included asking operators to provide us with detailed quantitative and qualitative information on the provision, deployment and usage of rail replacement bus and coach services during disruption to better understand the extent to which PSVAR-compliant vehicles are used.
- 1.2 The request for information focussed primarily on rail replacement services used for planned disruption. We sought to understand the volume of vehicles used by each operator in the provision of rail replacement services, the type (buses or coaches) and frequency of the vehicles used and the proportion of these that were PSVAR-compliant.
- 1.3 To enhance our understanding further, we asked train operators to provide narrative explanations to support their responses.
- 1.4 We also sought to establish whether any data is available from elsewhere on the availability of non-local buses and coaches.

Request for data from train operators

- 1.5 We asked train operators to provide data covering planned disruption (defined as disruption known of at least one day in advance) in the following four areas:
 1. Rail replacement **vehicles (buses and coaches)**, of which how many were PSVAR-compliant
 2. Rail replacement **journeys (buses and coaches)**, of which how many were PSVAR-compliant

3. Passengers who requested **booked and unbooked** assistance
 4. Number of **Alternative Accessible Transport (AAT)** bookings required due to the rail replacement vehicle being inaccessible
- 1.6 We collected data for the past 13 rail periods²⁵ covering a full year from the start of rail period six 2018/19 (19 August 2018) to the end of rail period five 2019/20 (17 August 2019).
- 1.7 In their responses, some train operators noted the difficulty in providing data in response to our request particularly items 2, 3, and 4 above. Reasons given included that the information is not routinely collected, and that providing accurate and comprehensive data would require manual processing which would be time-consuming and resource intensive.

Request 1a. Rail replacement vehicles (PSVAR compliance)

- 1.8 We asked train operators to provide us with data showing the number of rail replacement vehicles, broken down for both buses and coaches, and of these how many were PSVAR-compliant. The data referred to the unique number of bus and coach vehicles used (i.e. individual registration numbers) per period, and not the number of times a specific vehicle was used or the number of journeys undertaken. Responses²⁶ from operators who could provide PSVAR compliance data are set out below.

For buses

- Of 37,841 bus vehicles used
 - 99.96% of rail replacement bus vehicles **were** PSVAR compliant
 - 16 were **not** PSVAR-compliant

For coaches

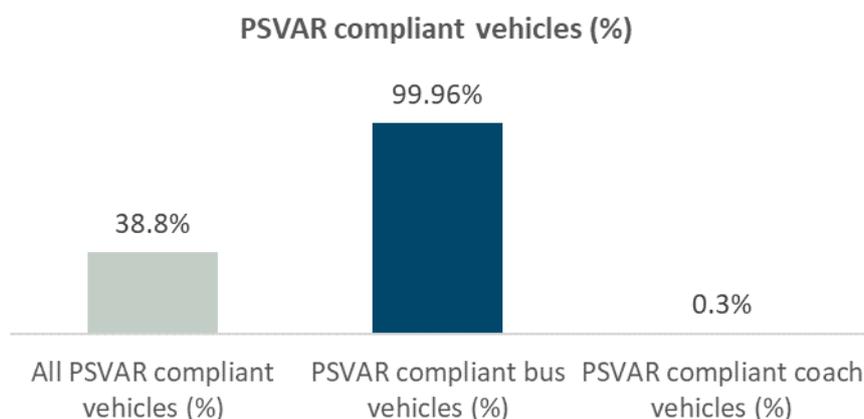
- Of 55,351 coach vehicles used
 - 0.3% (175 coaches) of rail replacement coach vehicles **were** PSVAR-compliant
 - 55,176 were **not** PSVAR compliant

²⁵ A 'rail period' is normally 28 days, or four weeks, for business reporting purposes and there are 13 rail periods in a financial year starting on 1 April

²⁶ Six operators were unable to provide full PSVAR vehicle information (including one null return).

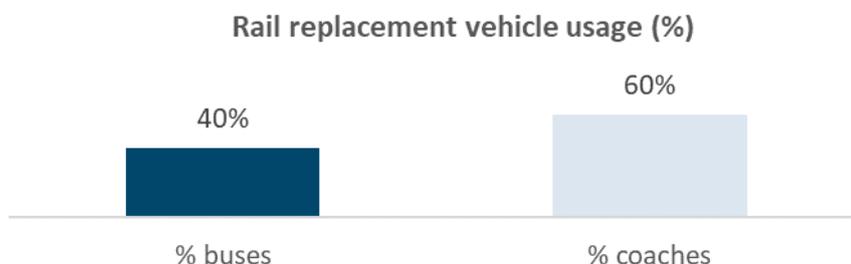
Overall, this means that:

- 38.8% of rail replacement vehicles (bus and coach) in total **were** PSVAR-compliant.
- This equates to 38,102 vehicles out of a total of 98,232 vehicles used over the past year²⁷.



Request 1b. Rail replacement vehicles (rail and coach usage)

1.9 Data provided by train operators indicate that nationally six out of ten (60%) rail replacement vehicles for the past year were coaches, and four out of ten (40%) were buses.

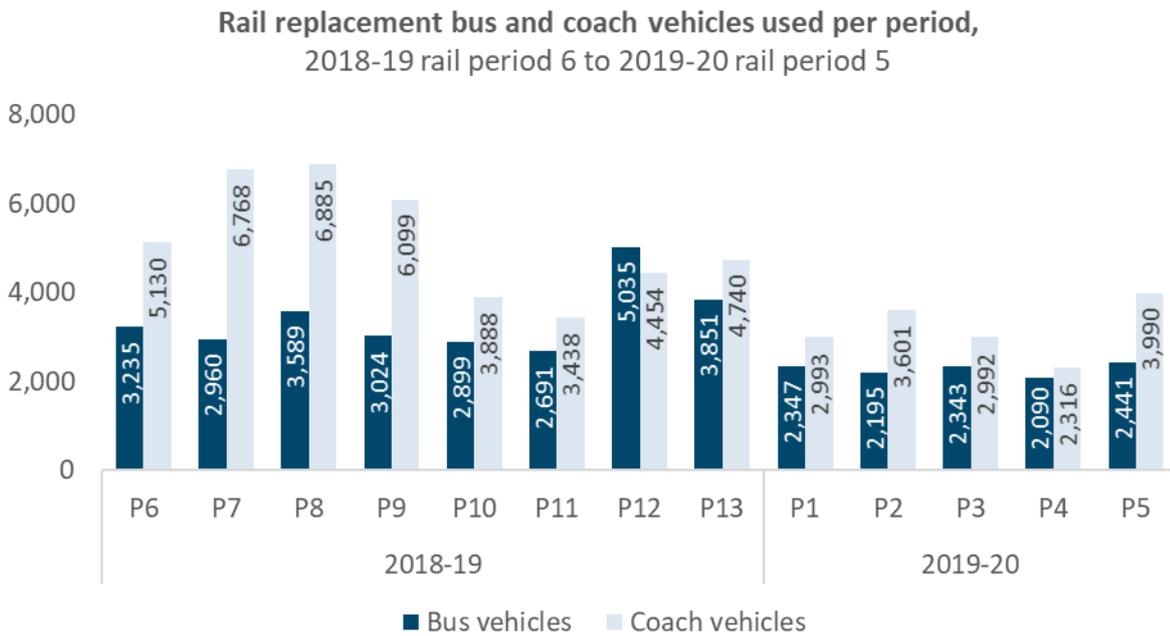


1.10 The graph below shows the volume of rail replacement buses and coaches used over the past year²⁸. From this we can see that with the exception of one period, train operators consistently used more coaches than buses. The peak period volume for coaches was 6,885 compared with a peak of 5,035 for buses, and the

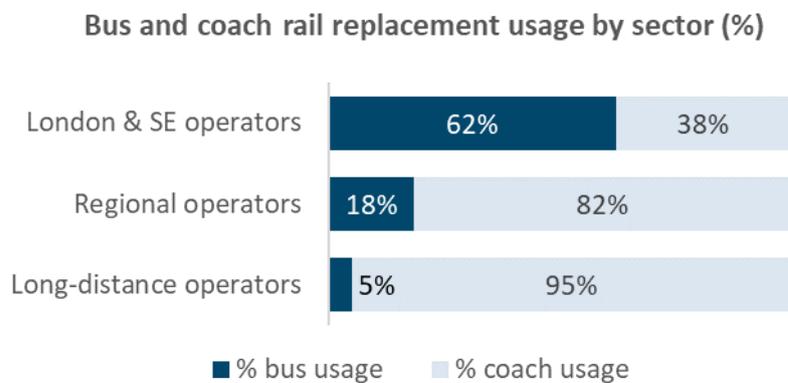
²⁷ The total number of vehicles (98,232) will not equal the sum of bus and coach vehicles, as one train operator could only provide the overall PSVAR compliance, and not PSVAR compliance by bus and coach vehicles.

²⁸ The ORR analysis should be treated as an estimate. Two train operators were unable to provide data on bus and coach usage and others were unable to provide data for each period, so therefore this data could be an under-estimate. There could be an element of double counting within periods as the same bus or coach could be used by more than one train operator, which may over-estimate the volume of vehicles.

average number of rail replacement coaches used per rail period was 4,407 compared with 2,977 for buses.



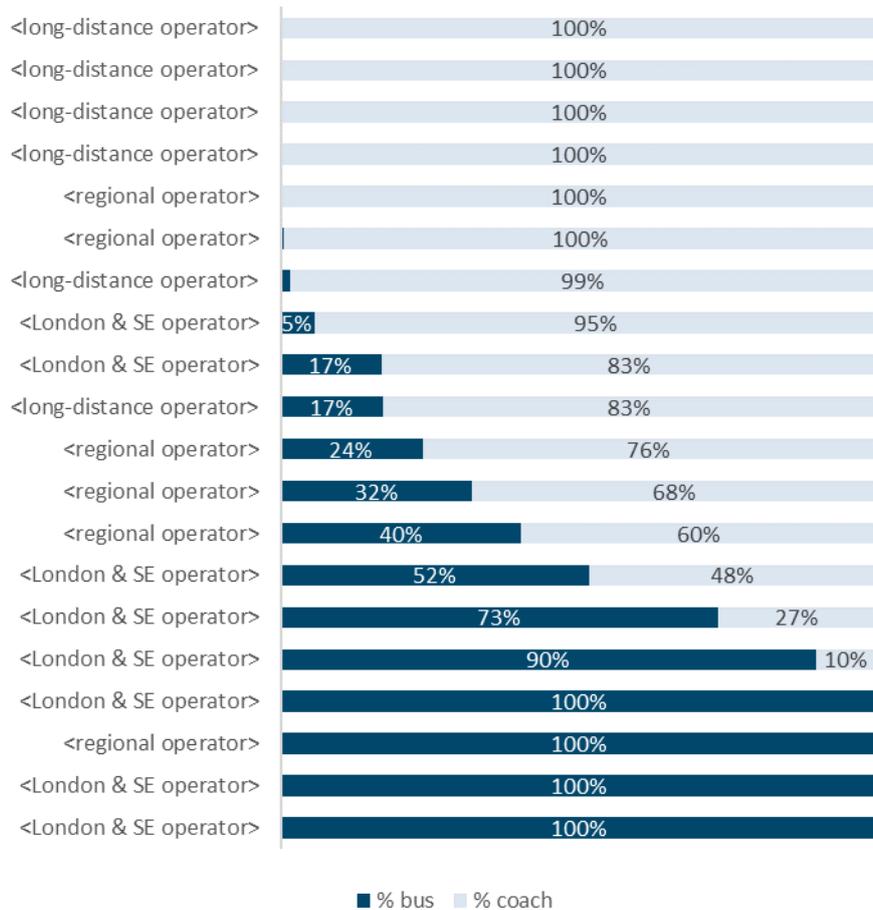
1.11 The data shows a clear difference between the type of operator²⁹ in whether a bus or a coach vehicle was likely to be used to provide a rail replacement service.



1.12 Long distance operators tend to use coaches for their rail replacement services, and therefore utilise a greater percentage of non PSVAR-compliant vehicles. Conversely, commuter train operators within the London and South East sector mainly use buses which are almost all PSVAR-compliant.

²⁹The operator mapping to a sector is based on ORR’s performance statistics: <https://dataportal.orr.gov.uk/media/1235/passenger-performance-quality-report.pdf> (see pages 10/11). Where operators provide services in more than one sector, we have allocated the operator to one sector.

**Bus and coach rail replacement usage by operator
(anonymised) (%)**



Request 2. Rail replacement journeys

- 1.13 We asked train operators to provide us with information showing the number of rail replacement vehicle journeys³⁰, broken down for both buses and coaches, and of these how many were PSVAR- compliant.
- 1.14 Only eight train operators were able to provide rail replacement journey data which indicated PSVAR compliance. Those operators who did not submit data stated that it was too difficult to collect, whilst many of those who did provide it indicated that they had given an estimate based on the number of vehicles used.
- 1.15 Whilst the scarcity of the data available on this measure, coupled with the limitations of the data provided, makes it difficult to draw any firm conclusions, it is notable that the results are similar to the vehicle usage data; the national results

³⁰ Journeys refers to the total number of rail replacement vehicle journeys undertaken due to planned disruption (as opposed to unique vehicles used as mentioned under request 1).

indicate 100% of bus replacement **journeys** use PSVAR vehicles, and 0.2% of coach replacement **journeys** use PSVAR vehicles.

Request 3. Booked and unbooked assistance requests

1.16 We asked train operators to provide data on the number of passengers who had requested either booked or unbooked assistance who used a rail replacement vehicle to complete their journey. Only nine operators were able to provide this data of which four operators reported fewer than 50 requests for assistance. Based on this limited sample, nationally 17,682³¹ passengers who requested booked³² or unbooked assistance used a rail replacement vehicle to complete their journey.

Request 4. Alternative Accessible Transport (AAT)

1.17 We asked train operators to provide data on the number of Alternative Accessible Transport (AAT) journeys that were required for rail replacement services if the bus or coach was inaccessible. Most operators provided a zero or nil return which indicated either that no AAT was booked or that they did not have the information available. Six operators were able to provide this data which showed that in total 1,823 AAT's³³ were booked for rail replacement services where the bus or coach was inaccessible (these are mostly taxis but may include other vehicles such as accessible mini-buses).

Narrative responses from train operators to the data request

1.18 We asked train operators to provide further narrative detail to support the information they had provided in response to the data request. With the exception of one area in particular, the comments made largely echo those which we have summarised in this chapter. This area related to the contractual arrangements for the provision of rail replacement services during periods of disruption; with the exception of two companies, train operators do not include requirements for the provision of PSVAR vehicles within their contracts of hire of rail replacement vehicles.

³¹ Two operators were responsible for 94% of this total.

³² Nationally there were 1.3 million booked assists in 2018/19:
<https://dataportal.orr.gov.uk/statistics/passenger-experience/passenger-assistance/>

³³ Of the figure shown, 70% were provided by one operator. Nationally there were 7,253 alternative accessible transport in 2018/19:
<https://orr.gov.uk/rail/consumers/annual-rail-consumer-report>

Other data sources

- 1.19 In order to inform our consideration of this issue further, we contacted other parties to understand what additional data may be available about the accessibility of buses and coaches.
- 1.20 In its January 2019 response³⁴ to ORR's Improving Assisted Travel consultation, DfT stated that 97% of buses (designed to carry over twenty-two passengers on local and scheduled routes) in Great Britain now incorporate a wheelchair space, boarding ramp and other accessibility features. We understand that more recent data shows this figure now stands at 98%³⁵. However, the data provided by DfT refers only to local buses, and not coaches and non-local buses (in respect of which DfT does not currently collect statistics).
- 1.21 We approached CPT, a trade body representing circa 1,000 bus and coach suppliers. Whilst it is not the only trade body, it is the biggest, covering around 90% of bus firms and 65% of coach firms in the United Kingdom.
- 1.22 Looking across the UK and not only at its members, CPT estimated that circa 2,200 accessible coaches have been built for the UK market, of which around 1,000 are still regularly used on express and other scheduled services. Of the remaining 1,200, its understanding is that around 600 might still be fully accessible though the ability to accommodate all types of wheelchairs and scooters varies, whilst the remaining 600 vehicles have had their lifts removed to increase coach capacity (in some cases from 49 seats to 70 seats) and to reduce maintenance costs. CPT commented that the availability for rail replacement work of those coaches that are compliant will depend on geographic location and use on other services that may or may not require PSVAR compliance.

³⁴ https://orr.gov.uk/data/assets/pdf_file/0013/41521/improving-assisted-travel-consultation-responses-july-2019.pdf

³⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774565/annual-bus-statistics-year-ending-mar-2018.pdf

2. Chapter two: The applicability of the Public Service Vehicle Accessibility Regulations 2000 (PSVAR) to rail replacement services

Summary

In this chapter we set out the results of our request for comments on the provisional legal advice on the question of whether (and to what extent) the Public Service Vehicles Accessibility Regulations 2000 (PSVAR³⁶) applies to rail replacement services, both buses and coaches. With the exception of three responses³⁷, replies largely focussed on the implications of the application of PSVAR rather than the legal advice itself.

Introduction

- 2.1 In the revised ATP Guidance published on 27 July 2019, we stated in paragraph A6.2 that:
- 2.2 “...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.”
- 2.3 At a high-level, PSVAR requires all single and double deck buses in use as at today’s date to have accessibility certificates i.e. to comply with the Regulations, and from 1 January 2020, all single or double deck coaches in use will also be required to have a certificate. PSVAR applies to either a local or scheduled service³⁸.
- 2.4 To enable us to reconsider the requirements set out in paragraph A6.2 of the ATP Guidance and to inform the consequential re-consultation, we instructed Counsel to provide legal advice regarding the applicability of the PSVAR to rail replacement

³⁶ <https://www.gov.uk/government/publications/accessible-buses-and-coaches/bus-and-coach-accessibility-and-the-public-service-vehicle-accessibility-regulations-2000>

³⁷ One of these three responses is legally privileged, and therefore is not being published at the current time, although we have considered it for the purposes of producing our final legal advice.

³⁸ Except where the vehicle is first used 20 years ago which is not used for local or scheduled services for more than 20 days in any calendar year.

services. We published this provisional advice on our website on 30 September³⁹ and sought comments from interested parties on this issue.

ORR's provisional legal advice

2.5 Our published provisional legal advice⁴⁰ included a plain English summary. For ease of reference this summary has been copied below.

“1. The Office of Rail and Road is consulting again on parts of its Accessible Travel Policy guidance for train operators. This guidance helps TOCs to put together their policies on how they make their journeys accessible for disabled people.

2. One issue being considered is whether when buses or coaches replace part of the rail route, known as “rail replacement services”, these buses or coaches have to comply with the Public Service Vehicles Accessibility Regulations 2000. These Regulations say that all 22 seater plus buses, and all such coaches from January 2020, have to be accessible, safe and comfortable for disabled people including wheelchair users. Failure to comply is a criminal offence under the Equality Act.

3. This advice looks at how far rail replacement services are covered by these Regulations. This is not a final view because the ORR is going to hear what consultees say before finally deciding what it thinks. At this stage, my conclusions are:

- (a) Buses and coaches do have to comply with these Regulations when they are providing a “local” or “scheduled” bus service;
- (b) It does not matter that it is the rail company (rather than the bus or coach operator) which is arranging and paying for these services. It also does not matter that passengers pay the train company for train travel, which covers the cost of a rail replacement bus or coach if one is needed. This type of service can still be a local or scheduled bus or coach service;
- (c) For a service to be local, the key point is that all its stops must be less than 15 miles apart. So, long-distance services where all stops are 15 miles or more apart will not be local;

³⁹ https://orr.gov.uk/_data/assets/pdf_file/0007/41866/accessible-travel-policy-rail-replacement-services-stakeholder-letter-2019-09-30.pdf

⁴⁰ ⁴⁰ https://orr.gov.uk/_data/assets/pdf_file/0005/41864/accessible-travel-policy-rail-replacement-services-full-legal-advice-2019-09-30.pdf

- (d) Even if a service is not local, it could still be scheduled. Many rail replacement services will be scheduled because they have scheduled stops, routes and times – that is what scheduled means;
- (e) Therefore, it is likely that many rail replacement services do need to be accessible to disabled people in order to comply with the law. The only ones that do not are non-local non-scheduled services i.e. long-distance services which do not have specified stops, times or routes. There is also an exemption for services provided by vehicles which are 20 years old and which are only used for that purpose less than 20 days a year;
- (f) The final issue is who would be guilty of the criminal offence if a rail replacement service did not comply with the law. This has not been tested in relation to rail replacement services, but my view is that it is not just the bus / coach companies who are at risk, but also potentially the train companies themselves because they are the ones who are causing the services to happen and it is within their power to ensure that only compliant vehicles are used.”

Responses from interested parties

2.6 We received 19 responses to our request for comments on our provisional legal advice. Non-confidential responses are published alongside this consultation document on the ORR website.

Responses on ORR’s legal advice

2.7 Fleet Development Ltd (t/a Classic Bus Hire) and one other respondent, commented directly on our published provisional legal advice. A third response was received, but retains legal privilege at the request of the respondent. We have given due consideration to all these responses, and the arguments they raise, in finalising our legal advice on the applicability of PSVAR to rail replacement services.

2.8 One respondent noted that the applicability of PSVAR to rail replacement is an unsettled area in law, and that there has been no judgement in the courts or clarification from the government as to the interpretation of the regulations on this point. As such there remain arguments as to the interpretation and application of PSVAR. Whilst not commenting on the legal advice, LNER noted the exemption in PSVAR for airlines in the event of a technical fault, weather or unforeseen circumstances, which it stated are the same as rail. It asked ORR to challenge DfT on this point.

- 2.9 DPTAC confirmed its original position that rail replacement services should use PSVAR-compliant buses and coaches. In noting that the legal advice suggests that unscheduled longer-distance rail replacement is outside the scope of the legislation, DPTAC commented that these services were relatively rare and in DPTAC's view disabled travellers would expect any unscheduled services to use PSVAR-compliant vehicles or at a minimum wheelchair accessible vehicle compliant taxis.
- 2.10 Following consideration of responses to our provisional legal advice, we are preparing to publish shortly our final legal advice on the applicability of PSVAR to rail replacement services. Notwithstanding our view that PSVAR applies to rail replacement services, we reiterate that ultimately enforcement of PSVAR is not within ORR's scope or power, and is instead a matter for DVSA.

Comments from respondents on the applicability of PSVAR to rail replacement services

- 2.11 We received a number of responses specifically on the implications of applying PSVAR to rail replacement services rather than on the legal advice. A number of train operators indicated that our provisional advice went against established industry practice and understanding of the legal position over two decades. These responses provided us with detail about the degree to which their rail replacement services are already available, and the implications for their services if ORR's legal advice is correct.
- 2.12 Some operators offered potential improvements to the accessibility of rail replacement services. In so doing, they indicated a willingness to work with ORR, DfT and others to ensure that rail replacement is accessible to all.
- 2.13 We would have invited operators to provide such information, as part of this re-consultation, so we are grateful to those who have pre-empted our request. This allows us to consider these implications and arguments in drafting this re-consultation document. However, we still request any further information in response to the re-consultation.
- 2.14 We have had regard to all responses and we summarise these comments in the section below, grouped by common theme where appropriate.

Bus and coach availability

- 2.15 Virgin Trains stated that the bus and coach industry is unregulated and as such the purchase of PSVAR vehicles is a commercial decision for them. On a similar note, GTR commented that the availability of PSVAR vehicles is outside rail

industry's direct control and noted that the PSVAR had been introduced in 2000 but many suppliers had yet to comply. One respondent noted that as the main market for suppliers of rail replacement coaches was private functions, there was limited incentive for these suppliers to invest in accessible vehicles. It estimated that as rail replacement only accounts for 8%-10% of a supplier's business, mandating train operators' compliance with PSVAR would not see an increase in the number of accessible coaches as the demand is not sufficient incentive for suppliers to invest in doing so. Abellio⁴¹ expressed the view that there is not enough capacity within the current market of supply to meet the demand or time for the market to adapt before 1 January 2020.

- 2.16 The lack of PSVAR-compliant vehicles was a comment made by many train operators. First Group operators⁴² noted that the variation within their networks results in a diverse portfolio of rail replacement vehicles. Both the First Group operators and Arriva highlighted that the availability of PSVAR vehicles in larger cities was higher than in those areas where the population is smaller and demand for these vehicles is less. ScotRail noted that this was a particular problem in its rural communities and far north regions.
- 2.17 One respondent highlighted the lack of available bus capacity, which is largely due to their use in fulfilling existing bus services. It added that in addition to insufficient buses being available, there are insufficient bus drivers available to drive those buses. Abellio shared a concern raised by its rail replacement service around the use of tachographs. The requirement to comply with both EU and domestic hours reduces driver scheduling efficiency and impact on the willingness of these companies to supply vehicles.
- 2.18 Many train operators highlighted the importance of the use of taxis which they considered provide greater flexibility to meet the requirements of the individual passenger and often transport the passenger to their final destination rather than just the train station.
- 2.19 LNER suggested that there was a risk that not being able to provide rail replacement transport may lead to an inability to meet aspects of its ATP. Further, if it was unable to provide any alternative transport, available taxis may be limited due to the high demand. This would have an impact on its ability to accept passenger assist bookings. LNER commented that an inability to transfer

⁴¹ Abellio companies: West Midlands Trains; ScotRail; Abellio Transport Holdings; and Abellio Rail Replacement; responses were, with some exceptions, largely the same.

⁴² GWR, SWR, TPE, and Hull Trains

customers by any means may see a rise in the amount claimed by passengers for consequential loss.

- 2.20 If PSVAR-compliance was a requirement of the ATP Guidance some train operators suggested that they may be unable to provide rail replacement services given the low number of compliant vehicles available to them. In this regard, one respondent noted that if it is potentially a criminal offence to operate non PSVAR-compliant replacement services, realistically a train operator must limit rail replacement services only to a level at which compliance can be assured.

Passenger safety

- 2.21 Virgin stated that if it was only able to use PSVAR-compliant vehicles it may have no choice but to use taxis for rail replacement which would leave passengers stranded for prolonged periods, and put disabled passengers at risk as they may be in crowded environments and unable to plan their onward journey. GTR also noted the safety and welfare issues of its passengers, and considered that its ability to respond flexibly to the situation would be greatly reduced if it could only use PSVAR-compliant vehicles. LNER also noted the potential safety issues arising from the absence of seat belts as well as the lack of luggage space which could create an evacuation hazard, if it had to use buses rather than coaches.
- 2.22 Abellio suggested that the increase in crowding would potentially invalidate the current approach legislated by the National Rail Security Programme⁴³ and considered that it will require a risk review lead by DfT. It also highlighted the increase in safety risk resulting from the behaviour of passengers denied an acceptable level of service. Abellio considered that a risk assessment along 'As Low As Reasonably Possible' principles was required, noting further that it is unlikely effective risk controls can be implemented in time.

Passengers without mobility needs

- 2.23 In GTR's view, PSVAR is aimed at passengers with mobility needs and whilst it recognises improvements are needed they should not be at the expense of customers with different access and support needs. SWR and another respondent expressed concern that mandating the use of PSVAR-compliant vehicles may impact negatively on some passengers with non-visible disabilities; for example, some may find travel by bus or coach stressful while passengers with autism who would travel on a quiet rail carriage may prefer to use a taxi. RDG also noted PSVAR's focus on wheelchair access and offered to undertake research to understand the impact on disabled passengers that do not use a wheelchair.

⁴³ <https://www.gov.uk/government/groups/land-transport-security-division>

- 2.24 Abellio referred to the relevance of the Equality Act 2010 and the intentions of the Inclusive Transport Strategy. It highlighted the need to ensure that changes to requirements do not adversely impact on a greater percentage of the protected characteristic groups under the Equality Act.

Engineering works

- 2.25 Train operators expressed concern about the impact of and on Network Rail's planned engineering work. GTR noted the many blockades in recent years on significant routes (Brighton mainline, East Coast mainline, and East and West coastways) whilst the First Group operators⁴⁴ referred to a number of significant planned engineering works over the next few years. Both highlighted that to use only PSVAR vehicles in these instances would severely restrict their ability to offer suitable rail replacement services as there are not enough compliant vehicles to meet demand. GTR also noted that this would be especially difficult where more than one train operator was involved.
- 2.26 Both GTR and LNER (who noted recent blocks between Edinburgh and Newcastle) commented that train operators may be less able to accommodate Network Rail engineering work to the same extent as now, which would have an impact on Network Rail's ability to maintain and improve infrastructure. One respondent suggested that train operators may be unable to agree to allow Network Rail to undertake engineering work until it has established whether it can source enough PSVAR vehicles to run a replacement service.

Station infrastructure

- 2.27 GWR highlighted that its infrastructure at a significant number of its stations restricts the use of PSVAR vehicles as it does not have PSVAR-compatible bus and coach stops, citing the requirement for low—floor buses to have a raised curb at stations in order to be fully accessible. Abellio also noted that at smaller or rural stations pick-up points may be at the roadside or some distance away from the station due to space and safety constraints. One respondent commented that where there are several train operators using the station, there was no formal mechanism in place to establish whether PSVAR-compliant infrastructure is in place which may leave passengers unable to disembark at their destination.

⁴⁴ GWR: electrification works on the Great Western mainline; Crossrail; 131 booked possession days in 2020; major infrastructure upgrades as part of Bristol East works and blockade of St Ives branch line in 2021. TPE: upgrade works between Manchester and Leeds over seven years affecting services for 39 weeks pa; engineering works across express routes; HS2; 600 individual possessions. Hull Trains: upgrade of East Coast Mainline engineering work.

Operational issues

2.28 Most operators highlighted the practical preference for coaches over buses in some circumstances, whilst LNER focussed on the challenges that would be presented to them as a long-distance operator. They noted that coaches provide greater capacity, comfort, and facilities such as greater luggage space, air conditioning, and toilets on longer distances. Transport Focus highlighted its focus group research in which rail passengers express a preference for coaches over buses whilst acknowledging that suitable provision has to be made for disabled passengers on all replacement services. It also noted the consensus reached in its recent Accessibility Forum that accessible transport must be provided on all occasions of disruption, though it was agreed that this may be harder to arrange for unplanned disruption.

Potential improvements

2.29 Abellio made a number of suggestions for potential improvements to the accessibility of rail replacement services. Suggestions included:

- a route-by-route assessment of the ability to switch to using buses rather than coaches;
- prioritising offering a PSVAR vehicle on each multi-vehicle departure;
- using smaller (fewer than 22 seats) PSVAR-compliant vehicles as part of those on 'standby' for planned disruption;
- work with Network Rail in the longer-term to review and amend some railheads for example, shortening possession limits/distances between railheads, to allow for buses to be used; and
- influence supplier behaviour through working with Abellio Rail Replacement (whilst noting that certainty in requirements is needed for suppliers in order to make significant investment necessary).

2.30 West Midlands Railway highlighted its work to examine the role and potential for community transport services to become involved in providing access to rail services including for planned rail replacement.

3. Chapter three: Consideration of revised requirements in Accessible Travel Policy Guidance for accessible rail replacement services

Summary

In this chapter we set out the legal parameters within which changes to the ATP Guidance must be considered, and the options for possible amendments to the ATP Guidance in relation to rail replacement buses and coaches on which we now seek respondents' views.

Introduction

3.1 ORR is subject to a number of legal and regulatory duties relevant when exercising our functions. In discharging our duties, as part of this work to reconsider the requirements set out in paragraph A6.2 of the ATP Guidance, we take an evidence-based approach by obtaining data and consulting with relevant groups before reaching any decision. Where we have identified that we do not hold the information needed to understand particular impacts, we have taken reasonable steps to seek it. Once we have identified impacts, we factor those into any decision-making process but there is no obligation to achieve a particular result simply because an impact is identified. ORR must take the regulatory approach it considers appropriate, bearing in mind all its competing duties and considerations, and having due regard to its equalities obligations.

Legislative and contractual framework

3.2 Under section 4(1) of the Railways Act 1993⁴⁵, ORR has a duty to exercise its functions in the manner we consider best calculated to meet a number of duties, set out in section 4. These duties are not set out in any order of priority and it is a matter for ORR to weigh them as it considers appropriate in relation to each activity or decision it is undertaking or making. The following section 4 duties are of particular importance to considering the ATP Guidance:

Section 4(1)

4(1)(a) to protect the interests of users of railway services;

⁴⁵ <http://www.legislation.gov.uk/ukpga/1993/43/section/4>

- 4(1)(b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods...to the greatest extent [ORR] considers economically practicable;
- 4(1)(c) to promote efficiency and economy on the part of persons providing railway services;
- 4(1)(f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of [ORR's] functions [...];
- 4(1)(g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Section 4(5)

- 4(5)(a) to have regard to any general guidance given by the Secretary of State about railway services or other matters relating to railways;
- 4(5)(f) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services.

- 3.3 Section 4(5C) - in performing its duties [...] in relation to any matter affecting the interests of users or potential users of railway services [or] any matter affecting the interests of providers of railway services [...] [ORR] must have regard, in particular, to the interests, in securing value for money, of the persons mentioned [...] above, of the persons who make available the resources and other funds mentioned [...] and of the general public.
- 3.4 Section 4(6) - in performing its duty [under s.4(1)] so far as relating to services for the carriage of passengers by railway or to station services, ORR shall have regard, in particular, to the interests of persons who are disabled.
- 3.5 Under Section 72 of the Regulatory Enforcement and Sanctions Act 2008⁴⁶, ORR must not impose burdens which it considers to be unnecessary or maintain burdens which it considers to have become unnecessary.
- 3.6 Section 149 of the Equality Act 2010⁴⁷ sets out the public sector equality duty which applies to ORR. It requires ORR, in the exercise of its functions, to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act, advance equality of

⁴⁶ <http://www.legislation.gov.uk/ukpga/2008/13/section/72>

⁴⁷ <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

opportunity between those who share protected characteristics and those who do not, and to foster good relations between those who share those characteristics and those who do not.

- 3.7 Condition 5 of the Passenger Licence⁴⁸ requires the train operator to establish and comply with an Accessible Travel Policy (ATP). Any material changes (i.e. where policy or procedure changes may have a significant impact, positive or negative, on a number of passengers) to an ATP must be approved by ORR, and the train operator must implement any changes, following a review, which ORR reasonably requires. Condition 5 echoes ORR's duties under section 4 of the Railways Act 1993 in that it provides that nothing in this licence condition shall oblige train operators to undertake any action that entails excessive costs taking into account all the circumstances including the nature and scale of licensed activities.
- 3.8 ORR (and train operators) must have regard to the Secretary of State's Guidance under section 4 of the Railways Act 1993. This includes the Design Standards for Accessible Railway Stations code of practice⁴⁹ which the Secretary of State has issued under his powers in section 71B of the Railways Act 1993. Section B1 of this code states that:
- (a) Buses or other substitute transport should be accessible to disabled people.
 - (b) Passenger train operators should ensure that accessible substitute transport is provided during engineering works.
 - (c) Where passenger train services are affected by engineering works or an emergency that leads to serious disruption, at short notice, it is recommended that passenger train operators provide accessible buses, where reasonably practicable, at no extra charge. Where this cannot be achieved, operators should ensure that other alternative accessible transport is available to disabled passengers, such as accessible taxis, at no extra charge and that these alternative travel arrangements are promoted.
- 3.9 There are also other obligations on train operators to provide rail replacement services. Section 248 of the Transport Act 2000⁵⁰ applies where train operators are providing "substitute road services," but does not oblige them to do so *per se*. They must "*ensure, so far as is reasonably practicable, that the substitute road*

⁴⁸ https://orr.gov.uk/_data/assets/pdf_file/0011/2234/lic-passlic.pdf

⁴⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425977/design-standards-accessible-stations.pdf

⁵⁰ <http://www.legislation.gov.uk/ukpga/2000/38/section/248>

services allow disabled passengers to undertake their journeys safely and in reasonable comfort.” Train operators are liable in damages in respect of any expenditure reasonably incurred or loss sustained by a disabled passenger in the consequence of any failure by the operator to comply: s 248(3).

- 3.10 Train operators’ franchise agreements⁵¹ do not go so far as to mandate that they provide rail replacement buses or coaches. The standard agreement provides (at Schedule 1.2, paragraphs 6.1 and 6.2) that train operators must “*use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2*”.
- 3.11 Paragraph 6.2 provides that “*the Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys.... In particular, the Franchisee shall use all reasonable endeavours to:*
- (a) *ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;*
 - (b) *transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;*
 - (c) *provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;*
 - (d) *provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and*
 - (e) *ensure if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.”*

⁵¹ Different agreements may apply for concession operators.

ORR consideration of Accessible Travel Policy Guidance for rail replacement services

- 3.12 The requirements of PSVAR are clear: all single and double deck buses “in use” as at today’s date are required to have accessibility certificates i.e. to comply with the Regulations; and from 1 January 2020, all single or double deck coaches “in use” will also be required to have a certificate. “in use” means that the regulated public service vehicle is being used to provide either a local service or a scheduled service.
- 3.13 We consider that the legal advice which ORR has obtained regarding the application of PSVAR to rail replacement services is also clear: a service being provided must be compliant with PSVAR if the service is local⁵² or scheduled⁵³ unless the service is exempt⁵⁴ or special authorisation⁵⁵ to use a vehicle which does not comply with accessibility regulations has been granted by the Secretary of State. With regard to the latter, we note that DfT has written recently to all local authorities and schools and colleges which commission their own services, to offer an initial two years extension from PSVAR for vehicles providing home-to-school transport, on which up to twenty percent of seats are sold. More recently, the Rail Minister has granted a one-month extension for the period from the requirements of PSVAR from 1 January 2020 to 31 January 2020.⁵⁶
- 3.14 As has been set out earlier in this document, monitoring the application and enforcement of PSVAR is the responsibility of the DVSA. We have identified that train operators may also be at risk of committing a criminal offence under section 175 of the Equality Act 2010 if they fail to ensure that the services they contract with third parties to provide rail replacement are compliant. Again, criminal enforcement is a matter for DVSA.
- 3.15 Therefore, we consider it is clear that where rail replacement services provided by train operators are used the law requires that those services be compliant with PSVAR. We expect all operators to take appropriate steps to comply with PSVAR. Where 100% compliance may be unachievable (for whatever reason), it is

⁵² All stops must be less than 15 miles apart.

⁵³ They have scheduled stops, routes and times.

⁵⁴ Where services are provided by vehicles which are 20 years old and used for this purpose less than 20 days a year.

⁵⁵ Under 178 of the Equality Act 2010 the Secretary of State may authorise, by means of a special authorisation order, the use of a regulated public service vehicle which does not comply with accessibility regulations.

⁵⁶

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

essential for operators to discuss with DfT and DVSA what, if any, options or mitigations may be feasible in the short-term in order to ensure compliance and remove the barriers that many people face when using rail replacement services.

- 3.16 With respect to the ATP Guidance, we recognise that mandating compliance with PSVAR could mean that both ORR and DVSA are in a position to enforce the same requirements and there would be a risk of double jeopardy for train operators. ORR operates a significantly different enforcement regime to DVSA and is not an expert in PSVAR or in the market for accessible buses and coaches. In addition, if two bodies monitor compliance and have responsibility for enforcement there may be a significant risk of unintended consequences such as financial implications that will have to be priced into franchise bid costs, reputational impact and duplication in the costs of oversight.
- 3.17 We consider that our statutory role is to consider how train operators should enable disabled passengers to make journeys using accessible transport, with a view to eliminating discrimination and advancing equality of opportunity for this protected group, and how that should be reflected within the ATP Guidance. ORR is an evidence-based regulator and we have sought to obtain data to inform our policy in this area; this is summarised within chapter one.
- 3.18 In responding to our request for comments on our provisional legal advice, many train operators have helpfully pre-empted the next stage of this consultation process and have taken the opportunity to set out the implications of mandating PSVAR requirements in the ATP Guidance; these are summarised in chapter two. However, we did not expressly seek comments on such implications, and so other interested parties may wish to make comments about the implications of mandating PSVAR in the ATP Guidance but have waited to see our current ATP Guidance proposals before responding.
- 3.19 We consider further the information we have obtained and been given in the sections below.

Availability of PSVAR-compliant vehicles

- 3.20 The data we have received from train operators demonstrates that the buses they use to provide rail replacement services are overwhelmingly PSVAR-compliant. However, the opposite is true in relation to coaches, which account for six in ten rail replacement services. Train operators cited the lack of available PSVAR-compliant coaches as the key reason why they have no choice but to run non-compliant vehicles. The information we have obtained from CPT appears to back up this assertion; there are only a total of 2,200 PSVAR-compliant coaches built

for the UK market, and of these CPT estimates that only 600 are accessible, although they may not be able to accommodate all types of wheelchairs and scooters, and potentially available for rail replacement work. However, there is the further caveat that availability is location dependent and that they are not already in use or have existing commitments.

- 3.21 Train operators suggest that PSVAR-compliant buses will not be able to fill this gap due to bus operators' existing commitments. The suitability of buses on some routes is also open to question given train operators' assertions that coaches are more suitable for longer-distance travel, something supported by Transport Focus' recent focus group research.
- 3.22 Noting that train operators used an average of 4,407 coaches per rail period over the year, which peaked at 6,885 coaches, it can be seen that there is a significant shortfall in the potential number of PSVAR-compliant coaches available to them for rail replacement. In these circumstances it is unclear how realistic it will be that train operators will be able to source sufficient PSVAR-compliant coaches from January 2020.
- 3.23 CPT suggests that around 600 of the 2,200 PSVAR-compliant coaches have had their lifts removed, largely to reduce maintenance costs or increase capacity, and are no longer fully accessible. Therefore, we can infer that the demand for PSVAR-compliant coaches has been limited and may have been insufficient for some coach operators to decide to maintain a coach's accessibility or to invest in either new vehicles or retro-fit to meet its requirements.
- 3.24 The extent to which train operators will be able to influence the coach market is unclear. However, in the absence of train operators requiring coach operators to provide vehicles which are PSVAR-compliant (we note the apparent absence in their contracts with coach suppliers to this effect) there may be a lack of incentive on coach operators to meet their requirements. There is a strong commercial incentive on train operators to ensure that they can run rail replacement services, and we note the response from Abellio which says that some of their suppliers are willing to work with them to improve the supply of vehicles. This suggests that the market may be willing to respond if train operators encourage it to do so. However, it is unclear how quickly a market response would be forthcoming, and to what extent.

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?

Question 2

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

Effects on passengers

- 3.25 ORR's provisional legal advice states that PSVAR applies to local and/or scheduled coach services from 1 January 2020, and does not draw any distinction in requirements between planned and unplanned disruption. We have set out above how train operators may face challenges in complying with this requirement due to the lack of available accessible coaches. In these circumstances, it is unclear how train operators will respond; failing to provide rail replacement services at all would significantly undermine access to rail replacement services for all passengers, and may place franchised train operators at risk of breaching their contractual arrangements with DfT. Some operators have suggested that, as a result, they may have no choice but to provide only a limited rail replacement service in the absence of access to PSVAR-compliant vehicles whilst others who continue to run non-PSVAR compliant vehicles may risk criminal enforcement action by DVSA.
- 3.26 The PSVAR reflects 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. Some respondents to our ATP Guidance consultation⁵⁷ highlighted the challenges presented in having to use non PSVAR-compliant vehicles. ORR recognises the role of accessible rail replacement services in terms of eliminating discrimination against disabled people and in advancing equality of opportunity for this cohort. Ensuring that public transport is accessible to all is an important way of fostering the inclusion of disabled people in everyday life.
- 3.27 It is also important that all passengers - including those who are disabled are able to travel confident in the knowledge that they will reach their destination. When there is disruption, the provision of effective rail replacement services is one way of ensuring that this need is met. The needs of disabled passengers are diverse and many may not be reliant on a PSVAR-compliant coach in order to travel; for

⁵⁷ https://orr.gov.uk/_data/assets/pdf_file/0013/41521/improving-assisted-travel-consultation-responses-july-2019.pdf

example our research⁵⁸ shows that 3,695 out of 4,968 (74%) passengers using Passenger Assist did not require a ramp to travel by train. Were rail replacement services to be curtailed in the way suggested by some operators an unintended consequence of PSVAR may be that the options for non-wheelchair users who may be content to travel on a non-compliant rail replacement service may be limited, and more disabled passengers will be adversely affected than may currently be the case. We note RDG's offer to undertake research to understand the impact on disabled passengers that do not use a wheelchair and will discuss their plans with them.

- 3.28 Train operators often rely on the use of taxis to ensure that passengers who are disabled can travel successfully, and we understand from operators that these taxis regularly take the passenger to their final destination (for example, their home rather than the relevant train station). Our research⁵⁹ shows that 207 passengers used a taxi as part of their booked assistance, and overall 97% of those passengers indicated they were satisfied with the taxi. Whilst accessible taxis may offer a suitable alternative for many passengers, we recognise that they may not always be suitable as the first option for passengers needing assistance (for example, a taxi may be delayed or unsuitable for the type of wheelchair).
- 3.29 Moreover, we note from some responses to our ATP Guidance consultation that a taxi-based approach may not be as inclusive as having fully accessible rail replacement services. For example where disabled passengers require access to toilet facilities and those with non-wheelchair mobility needs may find the step height to enter the vehicle challenging. However, PSVAR does not prevent the use of accessible taxis where they are appropriate. It is important that operators retain the flexibility to respond to the needs and choices of passengers; amongst the improvements we have made to the ATP Guidance are requirements to strengthen train operator staff training to help staff identify passengers who may need assistance including those passengers with non-visible disabilities. We have noted the responses from train operators that suggest that the limitations of station infrastructure means that rail replacement buses and coach services may not always be able to accommodate passengers that use wheelchairs.
- 3.30 The safety and security of rail passengers is also a key consideration for the industry, and ORR has its own safety duties to ensure that train operators consider the impact on the safety of passengers and staff of their use of rail replacement

⁵⁸ Experiences of Passenger Assist research by Breaking Blue 2018/19 – to be published w/c 6 January 2020

⁵⁹ Experiences of Passenger Assist research by Breaking Blue 2018/19 – to be published w/c 6 January 2020

services. Operators have highlighted the possible safety risks associated with using accessible buses on long-distance rail replacement, such as the lack of a requirement for seat belts and facilities for the safe storage of luggage. The dearth of available accessible coaches in the short term may also lead to passengers having to wait for long periods of time for rail replacement services in locations which are not designed to accommodate large numbers of people. Recent research⁶⁰ conducted by the Rail Safety and Standards Board (RSSB) highlighted the health and safety risks to passengers from crowding at stations. These risks may be exacerbated for disabled passengers, both those with mobility-related impairments and those with non-visible impairments, as well as for rail staff dealing with passengers. Whilst the effective handling of passengers during periods of disruption is not new for train operators, managing potentially large numbers for an extended period of time will be a major challenge for both operators and for passengers themselves.

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?

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

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

Question 4

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

Effects on Network Rail's planned work

3.31 Passengers want more reliable, faster and punctual services. As train operators have detailed in their responses, Network Rail has a large number of projects across many of the train operators' networks, some of which are highlighted in chapter one, designed to deliver the improvements that passengers want to see. These projects are key to ensuring that the network is safe, infrastructure is maintained and upgraded, and network capacity is increased. A number of these Network Rail projects will have major effects on passengers' ability to travel via

⁶⁰ RSSB: The Health, Safety and Wellbeing Effects of Crowding on Trains and in Stations

rail, thus making rail replacement services a necessity, on some occasions for an extended period of time.

- 3.32 There is an established industry procedure for Network Rail to book a possession of the track and infrastructure to enable it to perform its maintenance and improvement works. This is set out in Part D of the Network Code⁶¹. Network Rail must consult train operators and take account of their views before reaching a decision. Train operators can appeal Network Rail's decision to the Timetable Panel of the Access Disputes Committee but they do not have a veto and cannot prevent the possession going ahead. However, any dispute between Network Rail and the train operator which could potentially delay improvements going ahead is clearly unsatisfactory.

Question 5

We are 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?

Proposals for amending Accessible Travel Policy Guidance

- 3.33 In considering our approach to changes to the ATP Guidance we have to balance a number of competing duties and considerations (set out earlier in this chapter), and have regard to our equalities obligations. Whilst we recognise that it would advance equality of opportunity for disabled people if all rail replacement services were PSVAR-compliant, we have to consider the practical realities of the situation for operators at present. It is not clear how it would be in disabled passengers' interests generally to narrow their ability and options to travel if the level of rail replacement services generally is reduced, particularly when our research⁶² suggests that there are a significant proportion of disabled passengers who do not require access to a PSVAR-compliant vehicle to travel. There may also be occasions when a disabled passenger may prefer to use a taxi and it is important that train operators remain able to respond to these customers' individual needs and choices.
- 3.34 As the health and safety authority for Great Britain's railways, ORR has a responsibility for ensuring railway companies protect passengers from any health

⁶¹ <https://www.networkrail.co.uk/industry-and-commercial/information-for-operators/network-code/>

⁶² Experiences of Passenger Assist research by Breaking Blue 2018/19 – to be published w/c 6 January 2020

and safety risks, so far as is reasonably practicable. We recognise the potential for increased crowding as a consequence of requiring train operators in ATP Guidance to always provide accessible rail replacement buses or coaches.

- 3.35 The data we have been able to gather demonstrates that there are insufficient PSVAR-compliant coaches at the current time. Increasing the use of PSVAR-compliant buses may not always be either possible, for example where these have existing commitments to providing non-rail related services, or desirable, for example for long-distance travel where the facilities and comfort provided by a coach service are of greater importance. Securing vehicles which are compliant with PSVAR will therefore currently be a significant challenge for train operators given this lack of availability in the market, and this will be exacerbated during times of unplanned disruption. The coach market will likely respond to meet the requirements of PVSAR if the demand is forthcoming and the industry has a role to play in pushing this forward.
- 3.36 Our role here is to consider how train operators should enable passengers to make journeys using accessible transport, with a view to advancing equality of opportunity for disabled people. With this in mind, our preferred approach is to amend the ATP Guidance to influence train operators' behaviour to encourage and support the greater availability and use of PSVAR-compliant vehicles in rail replacement services, but not to mandate compliance with PSVAR as part of the Guidance.
- 3.37 It is not ORR's role to enforce PSVAR, breach of which is a criminal offence enforced by DVSA. Having regard to our statutory duties, our current view is that mandating compliance with PSVAR in the ATP Guidance would be likely to lead to a substantial reduction, and possibly even cessation, of rail replacement services in some cases. We consider that this may lead to a substantial worsening of the position for all passengers, including disabled passengers.
- 3.38 We recognise that this may yet be the effect of train operators' consideration of PSVAR and the potential criminal implications which flow from it. We are also concerned that this would introduce the potential risk of double jeopardy for operators, which we do not consider appropriate. Overall, we are not minded, having weighed the various competing duties to which we are subject, to mandate that obligation in the ATP Guidance.

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?

- 3.39 This leads us to the following proposals for revising the ATP Guidance for which we now seek views.
- 3.40 We expect operators to take appropriate steps to comply with PSVAR and we will amend Section 1.3 (Relevant legislation) of the ATP Guidance to reference our legal advice on the applicability of PSVAR to rail replacement services (there may also be some consequential amendments necessary to other paragraphs of the Guidance).
- 3.41 We have also set out below proposals as to how we could enhance the ATP Guidance to encourage and support the greater availability and use of PSVAR-compliant vehicles in rail replacement services. These could be adopted on their own or in combination, and we will consider what information we will need to collect to monitor their success. The proposals focus on incentivising improvements for planned disruption. Unplanned disruption is, by its nature, unpredictable, and we do not think there are specific incentives for it. Nonetheless, the incentives we have proposed for planned disruption (and therefore the increased numbers of PSVAR-compliant vehicles over time) would have an effect on the market available for unplanned disruption as well.

Proposal one

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

- 3.42 This proposal acknowledges the current availability of PSVAR-compliant vehicles is limited and without a stronger incentive to do so, vehicle suppliers may have no commercial reasons to invest in such. In our view, placing obligations on train operators to use their contractual arrangements with vehicle suppliers may be one way in which to increase demand and stimulate the market to respond. We will expect to see evidence that operators are using contractual processes to increase the availability of accessible vehicles.
- 3.43 As noted above, enforcing compliance with PSVAR is the responsibility of DVSA and it may be that the exercise of its powers may be a driver for change. We do not consider that having the ATP Guidance stipulate the same as a law already requires is appropriate, especially where we do not think enforcing that would be appropriate given the consequences for all passengers. Nonetheless, we still consider it appropriate to put in place some incentives to increase compliance and advance equality of opportunity for disabled people overall. We consider that this proposal would be an appropriate way of achieving these objectives. This would be the case regardless of whether or not DVSA enforces an infringement or if DfT grants an exemption from PSVAR.

Question 7

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

Proposal two

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.

- 3.44 This proposal makes the distinction between planned disruption where more time is available to source PSVAR-compliant vehicles and unplanned disruption where the opposite is usually the case. We would expect train operators to recognise the need to proactively source and manage rail replacement at an early stage so that appropriate vehicles can be sourced and where demand outstrips supply alternative measures can be considered (e.g. increased use of buses or accessible taxis in some circumstances). We have proposed 12 weeks as this is the point at which timetables should be finalised but it may be that a much longer time-period is more appropriate given that Network Rail blockades are planned a significant time in advance.

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?

Proposal three

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).

- 3.45 This proposal recognises the challenges faced by train operators in being able to source available PSVAR-compliant vehicles and has the potential to meet the needs of individual passengers more appropriately. However, such a requirement would only help those passengers who have booked assistance in advance of travel.

- 3.46 This proposal builds on the existing commitment in Section 4, para A2.3.1c of the ATP Guidance, which indicates that train operators must contact passengers that have booked assistance when there is service disruption, to inform them and discuss alternatives. They must also set out how they would inform passengers on board trains and at stations, whether they have booked or not.

Proposal four

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.

- 3.47 This requirement would assist passengers when planning their journeys. Train operators would be required to give information on both their own and National Rail enquiries websites about the accessible replacement services they will be providing and the options available to the passenger to be able to make their journey. The existing generic information provided by train operators on posters and leaflets would be enhanced to provide advice on where detailed information about rail replacement services can be obtained.

- 3.48 This proposal builds on the existing commitment in Section 4, para A2.3.1c of the ATP Guidance to inform passengers when there is a change to rolling stock accessibility.

Proposal five

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).

- 3.49 This proposal may improve the ability for operators to identify times and locations of high demand so that the available vehicles are deployed as effectively as possible to meet passenger demand. This arrangement would depend on the willingness of operators to work together in conjunction with vehicle suppliers – who have competing commercial interest – to make the most effective use of resources.

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?

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?

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?

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?

ORR's monitoring approach

- 3.50 In November 2017, ORR published its Economic Enforcement Policy and Penalties Statement⁶³. This sets out our approach to these matters in accordance with section 57B of the Railways Act 1993. We recognise the role of DVSA in monitoring and enforcing compliance with PSVAR. DVSA has yet to set out its plans for monitoring compliance with and enforcing PSVAR although we are aware that DVSA has a published enforcement sanctions policy⁶⁴.
- 3.51 In terms of ORR, we apply prioritisation criteria to help us focus our resources in a way that will deliver most value from our interventions. These prioritisation criteria apply across most of our discretionary enforcement activities. We focus our resources and priorities on systemic issues or one-off events of material significance and those aspects of compliance which are most important to passengers and where non-compliance would cause most harm. We have powers

⁶³ https://orr.gov.uk/_data/assets/pdf_file/0018/4716/economic-enforcement-statement.pdf

⁶⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795005/dvsa-enforcement-sanctions-policy.pdf

to take enforcement action under the licence where obligations are breached. In deciding whether to take enforcement action for example in relation to ATP Guidance for rail replacement, we would seek evidence of the steps taken (or not taken) by train operators to meet requirements of the ATP Guidance.

- 3.52 As an evidence-based regulator we also routinely collect and publish core data from train operators to monitor their compliance with regulatory obligations and inform any further action which may be necessary. This includes information about alternative accessible transport provided and ongoing research into the experience of passengers using Passenger Assist. The data we have obtained from train operators demonstrates that most do not record the use of PSVAR-compliant vehicles. It is important that we understand the extent to which PSVAR-compliant vehicles are used and whether there is progress being made in this area. Therefore, in relation to PSVAR, we will consider what metrics to collect to monitor performance, for example the number of accessible rail replacement buses, and coaches, per rail period and will draw on our sources of information such as any post-blockade reviews conducted by Transport Focus.

Summary of consultation questions

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?

Question 2

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

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?

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

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

Question 4

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

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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?



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