



## Transport: access for disabled people

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This note outlines the legislative requirements for transport providers to make their services and infrastructure accessible to disabled people.

The *Equality Act 2010* consolidates the legislation previously set out in the *Disability Discrimination Act 1995* and the *Disability Discrimination Act 2005* to increase access to transport services and infrastructure by disabled people. Regulations concerning trains, buses and coaches have been in force since 1999 and 2000 respectively. Regulations concerning the carriage of guide dogs in taxis came into force in 2001 and in private hire vehicles in 2004. Regulations affecting airports were introduced in 2007. Access to transport infrastructure, including bus and railway stations, airports and sea ports, is covered by general provisions on access to goods and services.

Recent European legislation intended to provide rights for disabled people when using buses and coaches is subject to a UK opt-out. New rights for people travelling by ship come into force in December 2012. The provisions relating to taxis in the 2012 Act have yet to come into force.

General advice on access to transport services by disabled people is available from the [Disabled Persons' Transport Advisory Committee](#) and the [Department for Transport](#).

There are separate notes available on passenger rights ([SN3163](#)); the carriage of guide dogs in taxis and minicabs ([SN1899](#)); and the Blue Badge parking scheme for disabled drivers (see: [SN1360](#)). Information on other transport issues can be found on the [Transport Topical Pages](#) of the Parliament website.

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### 1 Legislation

The consolidated legislative framework on transport and disability is now set out in Part 12 of the [Equality Act 2010](#).

The initial legislative framework was set out in the [Disability Discrimination Act 1995](#), as amended by the [Disability Discrimination Act 2005](#), and the Regulations made under it. The 1995 Act did not impose any general duties on transport operators (unlike those on employers and educational bodies). Rather, it permitted the Secretary of State to make regulations setting standards for taxis, trains, coaches and buses so that they are accessible to disabled passengers, including wheelchair users. It originally referred only to land-based transport and did not include aeroplanes or ferries, these were later included by the 2005 Act.

Disabled access to transport infrastructure, including bus and railway stations, airports and sea ports, is provided under a *general* right of access, not by any specific technical regulation. Subject to a test of reasonableness, disabled people have the right to expect access to all public places, including transport terminals and interchanges.

#### 1.1 Equality Act 2010

The Bill that became the 2010 Act was introduced in the House of Commons in April 2009. Part 12 and Schedule 20 of the Act replicate provisions in the 1995 Act, as amended, pertaining to taxis, public service vehicles and rail vehicles. Most of these provisions are straightforward replications (though in some cases in slightly different language) from the 1995 Act. They are included in the Act in order to bring together in one place the transport

infrastructure and vehicle access provisions of the 1995 Act which are contained in Parts III and V of that Act.

There are two noteworthy changes related to taxis and maritime transport, both of which are touched on in the relevant sections below.

## 1.2 Disability Discrimination Acts

The original Bill that became the 1995 Act did not contain any provisions for increased access to transport for disabled people. At Third Reading and Report stage of the Bill on 28 March 1995, three new clauses were introduced which provided for disabled access to any new public transport systems. Specifically, New Clause 11 gave power to the Secretary of State to amend the *Road Vehicles (Construction and Use) Regulations 1986* (SI 1986/1078) and other such regulations to provide for prescribed standards of accessibility for disabled people in all new public transport systems. Clause 13 required door-to-door transport to be provided by local authorities for those unable to use other forms of public transport and clause 18 related to public transport design.

The then Conservative Government did not accept the new clauses as drafted but during the debate, the then Minister for Social Security and Disabled People, William Hague, said that at a later stage in the passage of the Bill, the Government would include new requirements for access to transport by disabled people. He gave assurances that:

In the light of the representations that have been made and the arguments that have been advanced, the government are preparing to introduce provisions at a later stage in the discussion of the Bill, to amend existing legislation or, where necessary, introduce new powers covering buses, trains, coaches, trams, taxis, underground systems - even trolley buses, if such systems are introduced in future.<sup>1</sup>

Seven new clauses on taxi accessibility were added to the Bill during Committee stage in the House of Lords on 15 June 1995.<sup>2</sup> On 27 June 1995 the Government put forward proposals for dealing with access to buses, coaches and rail services.<sup>3</sup> These became sections 32-39 and 40-49 respectively of Part V of the 1995 Act. Some further amendments were introduced at Report stage to clarify points in the new clauses.<sup>4</sup>

The Bill that became the 2005 Act was published in draft in December 2003. It was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.<sup>5</sup> The Transport Committee took evidence from various organisations in November 2003 before the draft Bill was published so that it could draw any matters which seemed noteworthy to the attention of the Joint Committee.<sup>6</sup> It published a further report on disabled people's access to transport in March 2005.<sup>7</sup>

The Bill was introduced in the House of Lords on 25 November 2004. Clauses 5 to 9 covered transport topics and included provisions that did not appear in the draft Bill, in particular

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<sup>1</sup> [HC Deb 28 March 1995, cc852-869](#)

<sup>2</sup> [HL Deb 15 June 1995, cc2034-54](#)

<sup>3</sup> [HL Deb 27 June 1995, cc714-724](#)

<sup>4</sup> [HL Deb 20 July 1995, cc440-476](#)

<sup>5</sup> Joint Committee, *Draft Disability Discrimination Bill*, HC 352, 27 May 2004; and *The Government's Response to the Report of the Joint Committee on the Disability Discrimination Bill*, Cm 6276, 15 July 2004

<sup>6</sup> Transport Committee, *Disabled people's access to transport* (sixth report of session 2003-04), HC 439, 10 March 2004; and *Government response to the sixth report of the Transport Committee*, Cm 6184, May 2004

<sup>7</sup> Transport Committee, *Disabled People's Access to Transport: A year's worth of improvements?* (third report of session 2004-05), HC 93, 4 March 2005

clauses 6 to 8 (rail vehicles) and clause 9 (disabled parking badges). It received Royal Assent on 7 April 2005, just before the 2005 General Election. The Act provided that the exemption from section 19 to 21 of the 1995 Act (which dealt with the provision of goods, facilities and services to the public) for transport services would extend only to transport vehicles themselves, and created a power to enable that exemption to be lifted for different vehicles at different times and to differing extents. It extended the provisions to other transport modes such as air and sea, and amended the provisions concerning rail vehicle accessibility.

## 2 Railways

### 2.1 Trains

Accessibility requirements for rail vehicles (i.e. trains) were initially set out in the *Rail Vehicle Accessibility Regulations 1998* ([SI 1998/2456](#)) (RVAR), as amended. These Regulations applied to all new trains, trams and other track-based systems first brought into use after 1 January 1999. As at September 2010, more than 6,200 trains carriages were built in compliance with the requirements set out in those regulations.<sup>8</sup> All vehicles must be compliant by 1 January 2020, except for those which are specifically exempt under Order.

Much of the RVAR standards have now been superseded by European [Directive 2008/164/EC](#) which applies Europe-wide standards of rail accessibility. These were adopted by the UK on 1 July 2008 following a consultation<sup>9</sup> and debates in both Houses of Parliament. Introducing the domestic regulations, the *Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008* ([SI 2008/1746](#)), the then Railways Minister, Tom Harris, explained:

We have introduced regulations requiring all new rail vehicles, buses and coaches to be accessible. About 4,700 accessible rail vehicles in service are already covered by the Rail Vehicle Accessibility Regulations 1998, widely referred to as RVAR. We should also remember that many thousands of older rail vehicles have been made more accessible through the process of refurbishment, including some projects in which almost complete compliance has been achieved, such as the Mallard InterCity trains on the east coast main line and Sheffield's trams.

The United Kingdom's leadership in the area has now been recognised at a European level, and the Commission has come forward with new standards for the accessibility of trains. They are based mainly on RVAR and demonstrate how far in advance of mainland Europe we are in such matters. The new standards will apply to trains operated for passenger services on the UK mainline railway system. RVAR will remain as the accessibility standard for light rail, tram, metro and underground systems. Analysis of the new European standards shows that the majority of their technical requirements are equivalent or superior to RVAR. Indeed, much that was previously considered only as best practice under RVAR is now mandated under the new standards.

However, the new standards are less onerous in a small number of areas. For example, the maximum permitted floor gradients, maximum clearway and door widths and minimum duration and tone of door warnings might not be ideal. Those provisions have been included mainly to standardise with components already in use on mainland Europe and are not considered to reduce accessibility significantly, given the UK's

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<sup>8</sup> [HC Deb 7 September 2010, c301](#)

<sup>9</sup> DfT, [Consultation on Draft Rail Vehicle Accessibility \(Interoperable Rail System\) Regulations](#), 29 February 2008

unique network requirements. Although it would be unlawful for the UK to set more onerous standards under legislation, it is possible for those procuring new trains to set more demanding provisions during procurement. Indeed, we have done so recently in the InterCity express programme tender for trains to replace our high-speed train fleet.

It must also be remembered that the new standards represent a step change in the accessibility of trains on mainland Europe. We intend to work with the European Union to raise standards over time. The need to integrate the new European standards within our existing domestic regime is the reason that we are in Committee today.

The regulations are required to prevent the application of dual regulatory regimes—European and domestic—as the new standards will come into force automatically tomorrow, through the Railways (Interoperability) Regulations 2006, while the domestic standards have been in place via RVAR for almost 10 years. The rail industry has been clear that it wishes to avoid that possibility when the new standards come into force. It would be extremely confusing to subject operators to two accessibility regimes—domestic and European—with slightly different requirements, differing enforcement regimes and so on. That would be a true case of poor regulation.

Since, on introduction tomorrow, the new European standards will take precedence, the draft regulations will remove those trains that will be subject to them from the scope of RVAR. That will clarify the standard to which trains should be built or refurbished in future. The measure was recognised as sensible, and was supported by all stakeholders during recent consultation.

However, simply disapplying RVAR would leave those 4,700 trains that were previously subject to it completely unregulated—until they triggered the new European standards by being refurbished. During that period, which could be several years, it would not be possible to enforce accessibility requirements. That is unacceptable, so the draft regulations ensure that there is an obligation on the train operating companies to continue to operate the trains in an accessible manner, until they trigger the new standards. In drafting the new provisions, we have been careful to ensure that other aspects of the interoperability regime, such as the requirement to produce a technical file for each vehicle, will not be applied prematurely.<sup>10</sup>

In April 2009 the Department began a further consultation on changes to the RVAR regime for those light rail vehicles (meaning metro, underground, tram and prescribed modes of guided transport) remaining under the 1998 Regulations. Amongst those things consulted on was whether there should be an end date for compliance of light rail vehicles and if so when that date should be.<sup>11</sup> The *Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (SI 2010/432)* came into force on 6 April 2010. They bring light rail into line with other rail vehicles, including an end date for compliance of 1 January 2020.

The RVAR, a list of the vehicles to which they apply, a list of exemption orders and guidelines are available on the [Department for Transport website](#).

The original consultation on RVAR was slightly different to that for other types of transport as the Secretary of State had to consult under statute and publish draft regulations.<sup>12</sup> Three working groups were set up to advise the Department on achieving accessibility for disabled people to trains and trams; there were separate groups covering heavy rail systems, light rail and rapid transit systems, and underground rail systems. The groups also considered what

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<sup>10</sup> [First DL Committee, 30 June 2008, cc3-4](#)

<sup>11</sup> DfT, [Disability Discrimination Act 1995: Consultation on improving rail vehicle accessibility](#), 8 April 2009

<sup>12</sup> DETR, [Railways consultation document](#), May 1998

guidance and codes of practice would need to accompany regulations. The groups comprised representatives of the rail industry including operators, manufacturers and regulatory bodies. A further consultation paper was published in November 2003 to consider amendments to the regulations which, it was hoped, would address some of the problems with the system such as:

- Vehicles first brought into use before 31 December 1998;
- The exclusion of some major mass transit systems, for example people mover systems at major airports;
- A lack of certification for rail vehicle compliance with RVAR; and
- The long and complex process of issuing exemption orders.<sup>13</sup>

The Labour Government also originally proposed introducing an end date of 2025 by which all rail vehicles must comply with the regulations; following consultation it amended the date to 2020.<sup>14</sup> The Joint Committee that considered the draft Bill thought 2017 would be a more appropriate date,<sup>15</sup> but the government stuck with 2020. The precise date was the subject of discussion during the 2004-05 Bill's passage through the House of Lords. The government spokesman, Lord Davies of Oldham, argued that 2020 was a compromise between the government's original date of 2025 and the Joint Committee's preferred date of 2017. He gave the Committee updated figures of the numbers and costs involved: if 2017 were chosen, 4,355 rail vehicles would need to be replaced before their normal life expiry at a total additional cost of £353 million. Based on the government's preferred date of 2020, 2,200 vehicles would be affected at a total cost of £169.7 million.<sup>16</sup>

### **Assistance on trains and at stations**

European [Regulation 1371/2007/EC](#) on rail passenger rights and obligations came into force on 4 December 2009. In August 2009 the Labour Government published a consultation paper on the implementation of the Regulation.<sup>17</sup> Chapter V of the Regulation contains the provisions related to Persons with Reduced Mobility (PRMs); Articles 22, 23 and 24 relate to the provision of assistance at stations and onboard trains. They essentially state that assistance shall be provided to disabled people provided that they give 48 hours notice to the relevant operator that they will require assistance. Assistance built into the construction of trains (i.e. providing an audible warning when train doors are closing) is subject to domestic legislation and has applied to all new trains since January 1999.

## **2.2 Stations**

The 1995 Act established a general right of access to railway stations from 1 October 2004, subject to a test of 'reasonableness'. The structure of the rail industry is such, however, that specific responsibilities remain unclear. [Network Rail](#) (formerly [Railtrack](#)) owns almost all the stations in Britain (about 2,500), and is responsible for their maintenance and renewal, along with all the rail infrastructure, but it only manages the [17 major stations](#), and leases the remainder to the [train operating companies \(TOCs\)](#).

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<sup>13</sup> [HC Deb 3 November 2003, c23WS](#); and DfT, *Amendments to rail provisions of Part V of DDA: consultation*, 3 November 2003

<sup>14</sup> [HC Deb 29 November 2004, 18WS](#)

<sup>15</sup> op cit., *Draft Disability Discrimination Bill*, para 167

<sup>16</sup> [HL Deb 13 January 2005, cc116-117GC](#)

<sup>17</sup> DfT, *Disability Discrimination Act 1995: Consultation on improving rail vehicle accessibility*, 8 April 2009

Following privatisation the responsibility for ensuring Railtrack and the TOCs gave regard to the needs of disabled passengers lay with the [Rail Regulator](#). Under section 70 of the [Railways Act 1993](#), the Regulator was required to prepare and from time to time revise a code of practice for protecting the interests of disabled rail users. He issued a code, [Meeting the needs of disabled passengers](#), in July 1994. In addition, both Railtrack and the TOCs had to produce a disabled people's protection policy (DPPP), outlining the provisions made for disabled passengers, and future plans for improvements. In October 1998 Railtrack published a consultation document on its proposals for a ten year strategy for providing access for disabled people, though this noted that "given the replacement lifecycle of the rail infrastructure, making the network fully accessible will take longer than 10 years".<sup>18</sup> The document gave details on how the company foresaw the statutory framework of the Act interlocking with the relatively complex structure of the rail industry. This document was superseded by a consultation exercise on a revised code of practice launched by the Rail Regulator in May 2000.<sup>19</sup>

After briefly falling under the auspices of the [Strategic Rail Authority \(SRA\)](#), responsibility for disabled people and the adoption and implementation of the Regulator's revised code of practice passed to the Secretary of State for Transport following the [Railways Act 2005](#). A further draft document was issued by the SRA in April 2001 and the final code, [Train and station services for disabled passengers](#), was published in February 2002. All operators had to review their DPPP (required as a condition of the operating licence) and were invited to prepare an analysis of the infrastructure changes that might be required to comply with the legislation. Following a consultation, the 2002 Code has since been updated to take account of changes introduced by European standards for accessible railway infrastructure which were adopted by the UK on 1 July 2008 (see above).<sup>20</sup>

As at 26 May 2004, 20 DPPPs had been approved.<sup>21</sup> As part of the review, each operator undertook an access audit of all its facilities. Train operators have a commitment to meet the standards set out in the Code of Practice when refurbishing rolling stock or providing new or enhanced facilities at stations and on trains.

In March 2006 the then Railways Minister announced the *Railways for All* strategy and outlined where funding would be spent to upgrade access to stations:

The strategy describes what the rail industry is doing to improve access for disabled people. It considers all parts of a journey including how the industry will improve the way it provides information, removing barriers to access stations and further refinements in the specification of trains.

A key objective of this strategy is to improve the accessibility of our stations and in support of this, the Government announced last year ring-fenced expenditure of over £370 million through to 2015. This investment is known as the "Access for All" funding and is over and above commitments made in franchises, the ongoing renewal of stations and major station improvement projects.

The "Access for All" funding is split into two parts:

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<sup>18</sup> Railtrack, *Disability strategy: a consultation paper*, 7 October 1998, p1

<sup>19</sup> ORR press notice, "[Rail regulator launches new 'code' for disabled passengers](#)", 31 May 2000

<sup>20</sup> DfT, *Consultation on revision of "Train and Station Standards for Disabled People: A Code of Practice"*, 3 March 2008; and: DfT, *Accessible train and station design for disabled people*, July 2008

<sup>21</sup> [HC Deb 26 May 2004, c1629W](#)

Around £35 million per year is targeted at improving access to and within stations and to all platforms which would improve the accessible route and make the stations step-free. The strategy explains how we have prioritised this investment. These improvements will be targeted at the busiest non step-free stations and will be delivered by Network Rail.

Up to £7 million per year is available as small schemes funding and is targeted at less busy or rural stations where small improvements can go a long way to improving access. From today, bids are invited from train operating companies, local authorities and other parties, and will be assessed against stated appraisal criteria.<sup>22</sup>

There are three strands to Access for All Funding:

- **Small schemes** - up to 2011, stations bid for small schemes funding to DfT. That has now been reorganised and the franchised train companies are allocated money for this purpose and they then decide what to do with it;
- **Mid-tier funding** - this was a one-off for 2011 only – the [last round of applications](#) for funding took place in April 2011 for inclusion and completion by 2014; and
- **Major schemes** - no bids are solicited for this. Network Rail decides, as it plans its future programme, which stations require major upgrades to improve accessibility (usually expensive things like installing lifts). NR's future programme for 2014-19 forms part of the Periodic Review process.<sup>23</sup>

The strategy and associated documents are available on the [Department for Transport's website](#).

### 3 Buses and coaches

Accessibility requirements for buses and coaches are set out in the *Public service vehicles accessibility regulations 2000 (SI 2000/1970)* (PSVAR), as amended, that came into force on 30 August 2000. They require all buses and coaches, both old and new, to comply from 2017 for buses and from 2020 for coaches. In May 2008 the then Minister for Local Transport stated that 58 per cent of buses were low floor and wheelchair accessible at 31 March 2007, rising to over 80 per cent in urban areas and 100 per cent in London.<sup>24</sup>

Proposals for regulations covering buses and coaches were published informally in December 1997 and formally in September 1999.<sup>25</sup> Implementation dates vary according to the type of vehicle. The regulations initially apply only to new vehicles and therefore many services may continue to operate with vehicles that do not comply or with a mixture of vehicles. No regulations were made covering buses with fewer than 22 passengers, this includes vehicles such as:

- Public service vehicles (PSVs) adapted for eight or fewer passengers;
- Buses or coaches that are not used for hire or reward;

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<sup>22</sup> [HC Deb 23 March 2006, cc39-40WS](#)

<sup>23</sup> information on the Periodic Review can be found in section 6.1 of HC Library note [SN4128](#)

<sup>24</sup> [HC Deb 20 May 2008, c191W](#)

<sup>25</sup> DETR, *Disability Discrimination Act 1995: the government's proposals for buses and coaches*, December 1997; and: DETR, *The public service accessibility regulations 1999 (and others ) - a statutory consultation*, September 1999

- Airport buses used exclusively airside;
- Vehicles owned and operated by local authorities, local education authorities and health authorities that are not used for hire or reward;
- Crown vehicles (e.g. secure prison transport, police or military vehicles);
- Works buses not used for hire or reward; and
- Private vehicles operated for 'own account' activities

The purpose of the regulations is to enable disabled people to get on and off buses and coaches in safety, without unreasonable difficulty and to be able to be carried in such vehicles in safety and reasonable comfort. How this is achieved depends on the vehicle, for example the access solution for a full-size single deck bus may be a low floor but for a coach it might be a lift. It also permitted different time-scales and allowed regional and local variations. The Act also provided for accessibility certificates to be issued (rather like the existing initial roadworthiness certificates) and accessibility requirements to be included in the type approval procedure and so avoid the need for each vehicle to be individually inspected.

### ***Assistance on buses and coaches and at stations/terminals***

There is a further question as to the extent to which disabled passengers can and should be assisted into a vehicle.

[Regulation 181/2011/EU](#) was published in February 2011 and will come into force in March 2013. However the Government is currently consulting on whether to exempt all UK domestic services from its provisions, including those in Chapter III that relate to provisions regarding Persons with Reduced Mobility (PRMs). Articles 13 and 14, relate to the provision of assistance at stations/terminals and onboard buses and coaches.<sup>26</sup>

The Government proposes the exemption on the grounds that the UK already requires operators to provide reasonable assistance. The adjustments that organisations are required to make to services under the *Equality Act 2010* (formerly Part III of the 1995 Act) hinge on the concept of 'reasonableness'.<sup>27</sup> The Disability Rights Commission (DRC)<sup>28</sup> code explains that transport providers offering services in relation to the provision or use of a vehicle have a duty to take reasonable steps to:

- change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to make use of those services
- provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of those services.

However, the general duty to 'overcome a physical feature' does not arise in relation to the provision or use of a vehicle, with two exceptions: rental vehicles, where it applies in full; and

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<sup>26</sup> DfT, *Public Consultation on how EU Regulation 181/2011 concerning the rights of passengers in bus and coach transport will be applied in Great Britain*, July 2012

<sup>27</sup> for more information see HC Library note [SN1749](#)

<sup>28</sup> now part of the [Equality and Human Rights Commission \(EHRC\)](#)

breakdown recovery vehicles, where it applies only in part.<sup>29</sup> Separate guidance from the DRC for coach tour operators gives some more information:

## **8.2 Carriage of wheelchairs in non-wheelchair accessible coaches**

Quite a large proportion of wheelchair users are able to walk short distances and, with assistance, manage a few steps. Operators of coaches without devices to lift a wheelchair into the body of the coach should be prepared to accept such customers, provided that the wheelchair can be safely stowed in the coach's luggage compartment. However, if the wheelchair is a particularly heavy and cumbersome electric model that cannot be dismantled, or if any dismantled part of a wheelchair is so heavy that attempting to load it into the luggage compartment would be likely to endanger the health and safety of the driver, then they should not be expected to lift it.

Some coach operators have set a limit on the weight that a member of staff can be expected to lift. The Health and Safety Executive guidelines, for example, suggest that the maximum weight that should be lifted is 20 kg. This limit would apply to each part of a wheelchair, if it can be broken down into pieces. In such cases it would be reasonable for the operator to place a limit on the number of pieces: it is recommended that this should be a maximum of five. The person using the wheelchair, or the carer/companion would be expected to dismantle and re-assemble the wheelchair, but the driver or courier should be responsible for loading it onto the coach.

A coach operator might set a reasonable limit on the number of wheelchairs or scooters that can be carried on a non-wheelchair accessible coach as both luggage space and maximum vehicle weight are limited.<sup>30</sup>

Recently the Guide Dogs for the Blind Association launched a [Talking Buses](#) campaign. They want to amend the relevant legislation – the PSVAR Regulations 2000 – to include a requirement that all new buses include audio visual information systems.

PSVAR, a list of the vehicles to which they apply, a list of exemption orders and guidelines are available on the [Department for Transport website](#).

## **4 Taxis**

The *Equality Act 2010* makes some fundamental changes to the service that disabled passengers can expect from taxi drivers in England and Wales.<sup>31</sup> In particular, section 165 places duties on taxi drivers who have an accessible vehicle to, amongst other things, carry a passenger while in the wheelchair and not to make any additional charge for doing so.

Initially, it was thought that these changes would be gradually introduced between October 2010 and April 2011. A note from the Department for Transport explained the changes as follows:

### **Duties to assist passengers in wheelchairs.**

Sections 165, 166 and 167 of the Equality Act 2010 deal with the imposition of duties on the drivers of wheelchair accessible taxis and PHVs to assist passengers who use wheelchairs.

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<sup>29</sup> DRC, [Provision and use of transport vehicles: Statutory Code of Practice](#), 2006, paras 5.10-5.12

<sup>30</sup> DRC, [A guide to avoiding disability discrimination in transport: A Practical Guide for Tour Coach Operators](#), August 2007, pp23-24

<sup>31</sup> arrangements in Scotland are devolved and the powers to introduce regulations are contained in section 20 of the [Civic Government \(Scotland\) Act 1982](#), as amended

The duties which had been contained in the Disability Discrimination Act 1995 had never been brought into force so when the duties are actually brought into force – at a later date, but not before April 2011 - it will constitute a substantive change in the law.

**The duties** - Section 165 places duties on drivers of designated wheelchair accessible taxis and PHVs. Designated vehicles are those listed by the licensing authority under section 167 (see 'Lists of wheelchair accessible vehicles', below).

The duties are:

- to carry the passenger while in the wheelchair;
- not to make any additional charge for doing so;
- if the passenger chooses to sit in a passenger seat to carry the wheelchair;
- to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- to give the passenger such mobility assistance as is reasonably required.

This section will be commenced at a later date, but not before April 2011.

**Exemptions from the duties** - Section 166 allows licensing authorities to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for him or her to comply with the duties.

***This section will be commenced on 1 October 2010.***

Consequently, from October, taxi and PHV drivers who drive designated wheelchair accessible taxis or PHVs will be able to apply for exemptions. Licensing authorities that intend to maintain a list of wheelchair accessible taxis and PHVs licensed in their area should therefore be putting in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.

The Department will be making regulations early in 2011 specifying the exact format for the Exemption Notices that licensing authorities will issue and exempt drivers will be required to display in their vehicles. The Department will also arrange for the printing and distribution of the Exemption Notices (which will be similar to the Notices for drivers who are exempt from carrying guide dogs). These will be ready shortly after the regulations come into force early in 2011.

**Lists of wheelchair accessible vehicles** – Section 167 allows licensing authorities to maintain a list of "designated vehicles", that is, a list of wheelchair accessible taxis and PHVs licensed in their area. The consequence of being on this list is that the driver must undertake the duties in section 165.

This section will be commenced at a later date (not before April 2011).

So, although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates.

Also, from October, it will be possible for drivers to appeal against a decision by the licensing authority not to grant an exemption; the appeal will go to the magistrates' court.

When section 167 comes into force, and the lists of designated vehicles have a statutory effect, it will be possible for the owner of a vehicle to appeal against a licensing authority's decision to include his or her vehicle on the list. This appeal will also go to the magistrates' court.

Separate, and more detailed, guidance will be issued about the accessibility requirements which licensing authorities should apply in relation to this provision and other aspects of their functions under this new approach. This guidance will be issued in the autumn.<sup>32</sup>

Section 165 essentially replicates section 36 of the 1995 Act which was never brought into force. There are a number of reasons why the previous Labour Government did not bring section 36 of the 1995 Act into force. A February 2009 consultation paper on improving the accessibility of taxis explains the difficulties that the Government encountered:

It is clear from the data that there are certain risks that the Government wishes to avoid in taking this work forward. We do not want to pursue any policies that might lead to fewer wheelchair accessible taxis being available. We do not want to create any difficulties for a local licensing authority who may have already adopted a policy of only licensing wheelchair accessible taxis. We also do not want to implement a policy that might mean licensed hackney drivers transfer en masse into the private hire sector or leave the industry altogether. What we do want to achieve is an improvement in technical standards, for more taxis to be available to disabled people so that they can have improved access to jobs, services and social networks, and for the taxi trade to remain viable. We also want to continue to permit local licensing authorities to impose their own conditions to suit their own local circumstances, and for other aspects of the journey to be improved, for example boarding, driver assistance, and interchange with other public transport modes.<sup>33</sup>

This paper really goes into some detail about the possible difficulties, costs and concerns the Government had with this legislation. Although the Coalition Government has not published anything as substantive, one may assume that they are grappling with similar issues.

As indicated in the statement above, the Coalition Government stated in October 2010 that it would bring section 165 of the EqA into force by April 2011. However, like the previous Government it has clearly found difficulties in doing so. In reply to a July 2012 PQ, the minister, Norman Baker, said:

The Government has in place a rigorous approval system for considering the implications of any new Regulation which it introduces. We have been considering the case for commencing section 165 and 167 in the context of that approvals process, and I intend to make an announcement about section 165 and 167 in the near future.<sup>34</sup>

No further statement has as yet been made.

Some areas of the country have already made progress in terms of accessibility. For example, since 1 January 2000 every taxi operating in London has been required to take wheelchairs and all taxis operating in Edinburgh have been required to be wheelchair accessible since 1 January 1997.

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<sup>32</sup> DfT, *Equality Act 2010 – Taxis and Private Hire Vehicles: Provisions coming into effect in October 2010*, September 2010 [HC DEP 2010-1717]

<sup>33</sup> DfT, *Consultation on Improving Access to Taxis*, February 2009, para 2.11

<sup>34</sup> HC Deb 16 July 2012, c495W

It was originally intended that new taxis would be wheelchair accessible from January 2002 and all vehicles from January 2012. The Labour Government published draft specifications for taxis in August 1997.<sup>35</sup> The proposals covered features that could be included in regulations and suggested dates for their implementation. An assessment of the economic effects showed that significant costs would be involved in providing appropriate vehicles to meet the standard applied in the bus and train regulations and the proposals were put in abeyance.

In October 2003 the Government published details of a new approach. It intended to vary the application of the regulations to target first those areas where it believed accessible taxis would make the biggest impact and where additional cost would not have a major effect. The regulations would be introduced in these areas over a ten-year period from 2010 to 2020 and the Government would start consulting on the proposals in 2005. This would be monitored and a view would be taken in the future on whether the regulations should be extended to all areas.<sup>36</sup> A research report into accessible taxi design was published by the Department in June 2004.<sup>37</sup> After that, however, there was little movement.<sup>38</sup>

Then, during the debates on what became the *Local Transport Act 2008*, the Cross-bench Peer Baroness Chapman put down a group of amendments, with all-Party support, to apply the duties of section 36 of the 1995 Act to taxi-buses,<sup>39</sup> making them accessible to disabled people.<sup>40</sup> It was added to the Bill and became section 55 of the 2008 Act. This was followed, in February 2009, by a more general consultation on how to proceed with taxi accessibility.<sup>41</sup>

The regulations and guidelines related to taxis are available on the [Department for Transport website](#).

## 5 Aviation

The 2010 Act applies to facilities and services provided by airports, though not to services on board an aircraft. There are a number of conditions covering disabled passengers which airports and airlines have to observe on the advice of the [Civil Aviation Authority \(CAA\)](#) and the [International Air Transport Association \(IATA\)](#) in the interests of safety and the health of all passengers. For example, an airline can refuse to carry a passenger if the person's medical condition might adversely affect the health of safety of other passengers or the crew or if derogation if the size of the aircraft or its doors makes the embarkation or carriage of a disabled person physically impossible. Cabin staff are trained to deal with medical emergencies but are not expected to undertake routine medical/nursing care. An airline can insist that a disabled person is accompanied by someone to provide this care. No airline operating in the UK may fly other than in accordance with the terms of the air operators' certificate awarded to the operator of the aircraft by the CAA.

After the 1995 Act was introduced various voluntary codes were adopted by the industry, such as the European voluntary commitments on air passenger rights at both airports and on

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<sup>35</sup> DETR, *Disability Discrimination Act 1995: the government's proposals for taxis*, July 1997

<sup>36</sup> HC Deb 28 October 2003, c10WS; DfT, *Taxi accessibility regulations – policy proposals*, October 2003

<sup>37</sup> DfT, *The Determination of Accessible Taxi Requirements*, June 2004

<sup>38</sup> HC Deb 17 December 2007, c1193W

<sup>39</sup> 'taxi-buses' are local bus services registered and operated by taxi owners who have a "special restricted" PSV operator's licence

<sup>40</sup> HL Deb 30 January 2008, cc624-627

<sup>41</sup> DfT, *Consultation on improving access to taxis*, 2 February 2009, paras 2.8-2.9

airlines, which came into effect in February 2002. The Disabled Persons' Transport Advisory Committee (DPTAC) published a [code of practice](#) in March 2003.

[European Regulation EC 1107/2006](#) created new rights for disabled people and Persons with Reduced Mobility (PRMs) when travelling by air. The Regulation came into force in two parts:

- From July 2007 it prohibited airlines from refusing bookings or embarkation due to a disability; and
- From July 2008 it required airport managing bodies to organise the provision of the services necessary to enable disabled/reduced mobility passengers to board, disembark and transit between flights, with costs recovered through a charge on airlines proportionate to the total number of passengers they carry to and from the airport.

There do, however, remain exemptions to these requirements. Article 4 of the EC Regulation states:

*Article 4*

**Derogations, special conditions and information**

1. Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:

(a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned;

(b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met (...)

The Department for Transport published a new Code of Practice in July 2008 explaining how these measures were to be implemented and enforced.<sup>42</sup> A [guide to 'your right to fly'](#) is available on the Equality and Human Rights Commission website. Other relevant documentation is available on the [Department for Transport website](#).

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<sup>42</sup> DfT, [Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice](#), July 2008

## 6 Maritime

The requirements under the [Equality Act 2010](#) for shipping, particularly ferries, largely mirror those that apply to air transport. Section 30 of the 2010 Act gave the Minister the power to make regulations specifying where equality service provisions would apply. The intention was to give certainty to people wishing to travel on ships and hovercraft that move between waters under the jurisdiction of different States and may, at times, be outside the jurisdiction of any State. The Government consulted on proposals for implementing Part 3 (services and public functions) of the 2010 Act in relation to transporting people by, or a service provided on, a ship or hovercraft in early 2011. These proposals are intended to ensure that people receiving services onboard ships and hovercraft have, as far as it is reasonable to do so, the same protection from discrimination, harassment and victimisation as they would on land.<sup>43</sup>

Access to shipping is governed by international laws and standards. EU [Regulation 1177/2010](#) concerning the rights of passengers when travelling by sea and inland waterway will apply in the UK from 18 December 2012. The Regulation will provide disabled persons and persons with reduced mobility (PRMs) with the same opportunities to travel by water as they have in the rail and aviation sectors across the EU. It also provides the same exceptions for ships as for aircraft to refuse transport to disabled people on safety grounds, in which case they must 'make all reasonable efforts' to offer an alternative. It also provides a right to assistance at ports and on ships where notice has been given of such a requirement.

In 1997 the [International Maritime Organization \(IMO\)](#) published its *Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs*, published in the UK by the [Maritime and Coastguard Agency \(MCA\)](#).<sup>44</sup> This document gives basic advice on how the needs of disabled people should be met, including provision of information in appropriate formats and training for crews. In November 2000 DPTAC also published a code of practice on meeting the needs of disabled people on large passenger ships, particularly ferries. This covers such areas as travel information, booking arrangements, assistance at ports and on-board ship and the need for staff training in disability awareness.<sup>45</sup>

The Transport Research Laboratory (TRL) conducted a review of the DPTAC code in 2005, with a final report published in January 2006. It found that the shipping and port industry had partially met DPTAC's recommendations on a voluntary basis. In some cases this partial compliance meant that some facilities were difficult or impossible for a disabled person to use. While it was recognised that there might be operational reasons or restrictions for not meeting the recommendations, nonetheless, the evidence from this research indicated that the voluntary approach had not been fully effectively, and should be reviewed.<sup>46</sup>

## 7 Transport infrastructure

In practice the speed at which full access to transport infrastructure could be achieved will vary greatly. On systems like the London Underground, a fully accessible network may never be possible, but progress can be made by ensuring that all new and refurbished stations are

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<sup>43</sup> DfT, [Consultation on the application of Part 3 of the Equality Act to Ships and Hovercraft](#), 13 January 2011

<sup>44</sup> MCA, [Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs](#) (Marine Guidance Note MGN 31 (M)), 1997

<sup>45</sup> DPTAC, [Design of Large Passenger Ships and Passenger Infrastructure: Guidance on Meeting the Needs of Disabled People](#), 2000

<sup>46</sup> TRL, [Review of DPTAC guidance: Large passenger ships and passenger infrastructure \(final report\)](#), January 2006, pvii

accessible. The same cost constraints which are a factor of the age of the system also apply to many railway stations and particularly where the only access between platforms is by means of a footbridge or subway. In the past, Government guidance to local authorities has placed strong emphasis on the need for all local transport schemes to include access provision for disabled people.<sup>47</sup> There is now a duty for local authorities to conduct Equality Impact Assessments on their Local Transport Plans.<sup>48</sup>

Those provisions in the 2010 Act that replace Part III of the 1995 Act impose duties on those providing goods, facilities or services to the public and those selling, letting or managing premises.<sup>49</sup> The legislation provides in a general sense for access to transport infrastructure and this includes railway stations, bus and coach stations, airports and sea ports. This means that, *subject to a test of reasonableness*, disabled people have the right to expect access to all public places, including transport terminals and interchanges.

Originally, there was an exemption in section 19(5) of the 1995 Act which meant that although there were mandatory requirements for accessible vehicles and related infrastructure, there are none for the services provided with them. In 1999 the Disability Rights Task Force (DRTF) published a report recommending that the exemption for the providers of transport services consisting of the use of any means of transport should be removed.<sup>50</sup> The Labour Government accepted the recommendation<sup>51</sup> and in November 2002 it published a consultation on proposals to lift the exemption for transport services<sup>52</sup> followed by a response, further proposals and draft regulations in November 2004.<sup>53</sup>

Section 5 of the 2005 Act included provisions to replace the exemption for providers of transport services in Part III of the 1995 Act. It came into force for all transport services except aviation and shipping on 30 June 2005. The anticipated cost to transport providers of the changes was set out in the regulatory impact assessments to the 2005 Bill and the draft regulations:

- bus and coach industry – £3.6 million;
- taxi and private hire trade – £4.5 million;
- car hire businesses –£1.6-1.9 million; and
- rail industry – £6.75 million (if staffing levels were increased as a result of lifting the transport exemption for rail services, the recurring costs would be in the region of £45-135 million per annum).<sup>54</sup>

The final regulations were laid before Parliament on 18 November 2005 and came into force on 4 December 2006.<sup>55</sup> The reason for having such a long lead-in time was to ensure that the Disability Rights Commission's Code of Practice was in place first.<sup>56</sup>

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<sup>47</sup> see, e.g.: DfT, *Full guidance on local transport plans: second edition*, December 2004, paras 119-138

<sup>48</sup> DfT, *Guidance on Local Transport Plans*, July 2009, para 41

<sup>49</sup> for more information see HC Library note [SN1749](#)

<sup>50</sup> DRTF, *From Exclusion to Inclusion*, December 1999, para 4

<sup>51</sup> DfEE, *Towards inclusion – civil rights for disabled people*, March 2001, pp73-74

<sup>52</sup> DfT, *Consultation on the Government's proposals to lift the exemption for transport services from some of the civil rights duties in Part III of the Disability Discrimination Acts*, November 2002

<sup>53</sup> DfT, *DDA 1995: lifting Part 3 exemptions for transport services*, 29 November 2004

<sup>54</sup> *ibid.*, pp 11-26

<sup>55</sup> *Disability discrimination (transport vehicles) regulations 2005 (SI 2005/3190)*

The adjustments that organisations are required to make to services hinge on the concept of 'reasonableness'. The DRC code explains that transport providers offering services in relation to the provision or use of a vehicle have a duty to take reasonable steps to:

- change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to make use of those services
- provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of those services.

However, the duty to overcome a physical feature does not arise in relation to the provision or use of a vehicle, with two exceptions: rental vehicles, where it applies in full; and breakdown recovery vehicles, where it applies only in part.<sup>57</sup> The code also offers guidance to transport providers on the general approach:

A transport provider should be able to identify the more obvious barriers or impediments encountered by disabled people in accessing its services in respect of the provision or use of vehicles. Regularly reviewing the way in which it provides its services to the public, for example via periodic disability audits, might help a transport provider identify any less obvious or unintentional barriers to access for disabled people.

Obtaining the views of disabled passengers and customers, as well as disabled employees, will also assist a transport provider. Disabled people know best what hurdles they face in trying to use the services provided. They can identify difficulties in accessing services and might also suggest solutions involving the provision of reasonable adjustments. In addition, local and national disability groups or organisations of disabled people have extensive experience which transport providers can draw on. Listening carefully and responding to what disabled people really want helps transport providers find the best way of meeting disabled people's requirements and expectations.

Employee training is also an important factor in providing reasonable adjustments. Employees should be generally aware of the requirements of disabled passengers and potential passengers and should appreciate how to respond appropriately to requests for a reasonable adjustment. They should know how to provide an auxiliary service and how to use any auxiliary aids which the transport provider offers. Employees could also be encouraged to acquire additional skills in serving disabled people; for example, communicating with hearing impaired people and those with speech impairments.<sup>58</sup>

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<sup>56</sup> now the Equality and Human Rights Commission, see: DRC, *Provision and use of transport vehicles: Statutory Code of Practice*, 2006

<sup>57</sup> *ibid.*, paras 5.10-5.12

<sup>58</sup> *ibid.*, paras 5.15-5.17