

Consultation on the European Commission proposal on bus and coach passenger rights: report on responses

Introduction

1. On 4 March 2009 DfT published a consultation paper seeking views on the 'European Commission proposal on bus and coach passenger rights' which aims to make bus and coach travel more attractive and accessible to all passengers, including disabled people and people with reduced mobility, and to create a level playing field across Europe, both between operators and different modes of transport.
2. The proposed Regulation sets out provisions to:
 - prevent discrimination on grounds of nationality or place of residence with regard to conditions and prices offered to passengers by operators;
 - establish standard rules on liability in the event of death or injury of passengers and loss of or damage to their luggage and to harmonise these with other modes of transport;
 - prevent discrimination on the grounds of disability or reduced mobility with regard to booking a journey or boarding a vehicle (unless safety regulations or the size of the vehicle makes it impossible);
 - give disabled persons and persons with reduced mobility the right to assistance during their travel free of charge;
 - oblige companies to provide passengers with adequate information, throughout their journey, particularly where services are cancelled or subject to long delays, and with information about their rights; and
 - ensure operators have a complaint handling mechanism, with each Member State designating a body responsible for the enforcement of the proposed Regulation.
3. The consultation paper was published on the DfT website (www.dft.gov.uk) and sent to 95 stakeholders. The consultation ran for six weeks, ending on 14 April, rather than the usual twelve, to ensure that stakeholder views could be taken into account before detailed negotiations on the proposal began in April 2009.
4. In total, 37 responses were received. Of which 4 were from local government and parish councils, 4 were from members of the public, 13 were from operators and groups representing operators, 6 were from passenger and consumer representatives, 4 were from disability organisations, and 6 were from other bodies including enforcement bodies, vehicle manufacturer representatives and unions.
5. Responses to the consultation have helped to inform the UK's position. This report summarises the responses to the specific questions asked in the consultation paper and sets out the Government's response. Where responses did not correspond directly with the questions posed, but took a more general approach, these comments have been considered under the most appropriate questions. This report does not attempt to summarise all of the comments made by respondents, but all comments were considered, whether or not they appear in this report.

Summary of responses to individual questions

Question 1: Do you have any comments on the proposed definitions set out in Article 3 of the proposed Regulation?

Article 3(1) “bus and/or coach undertaking”:

6. Some respondents felt that the current definition would mean that only local bus services operated by holders of international operator’s licences were covered, and not those operated by holders of national licences. Another respondent felt that the definition should be changed to cover only those operators providing international services that are not themselves local bus services in nature.

Government response:

7. The Government's interpretation of "bus and/or coach undertaking" is that it would include: operators authorised in the State of establishment to undertake carriage by coach and bus in accordance with the market access conditions laid down by national legislation (operators with a standard national licence); and operators that hold a valid Community licence issued in conformity with Council Regulation (EEC) No 684/92 for the purpose of carrying out international services of carriage of passengers (operators with standard international licence).

Article 3(4) “transport contract”:

8. One stakeholder felt that places where a ticket can be bought (for example, a carrier or ticket vendor) should be included.

Article 3(5) “ticket”:

9. One consumer body was pleased that "ticket" included the words “equivalent in paperless form, including electronic form” as they felt this would ensure passengers using paperless ticketing had the same rights as passengers using more traditional types of ticket. One respondent questioned whether the definition would prevent operators offering concessionary travel on defined services to specific groups of people. Another thought the definition needed greater clarity.

Article 3(6) “ticket vendor”:

10. A couple of respondents said that it was important to remember that ticket vendors and retailers do not conclude a contract of carriage, nor sell tickets on their own account, they merely arrange a contract of carriage between the customer and the organiser/transport undertaking. One respondent felt that adding "intermediary selling" would tighten the meaning of this definition.

Government response:

11. The Government has serious concerns about the proposed Regulation relying on the concept of a 'ticket' when technological developments mean transport providers are increasingly moving away from conventional tickets, with smartcards, pay as you go and direct payments becoming more common. We are looking to work with other Member States on a revised trigger for the rights under the Regulation other than a ticket. If the trigger is changed then these definitions would also need to be revised, which is likely to address concerns over where the ticket was bought and whether a concessionary pass is a ticket. We agree that the definition of "transport contract" should be clarified to recognise that ticket vendors and retailers do not conclude the transport contract.

Article 3(8) "disabled person or person with reduced mobility":

12. One operator had concerns that the definition of a person of reduced mobility was wider than the definition of a disabled person in the Disability Discrimination Act. Another respondent felt that parents with infants and children should be included as having reduced mobility.

Government response:

13. In terms of the definition of disabled person this is a definition that has previously been agreed in other European legislation. Whilst it is inconsistent with the UK's definition (and probably the definitions in some other Member States) we do not believe it would be worthwhile pursuing a different definition.

Article 3(10) "terminal managing body":

14. One passenger representative was concerned that the ability of Member States to designate bus and coach terminals where assistance for disabled people would be provided may limit the scope of the Regulation.

Government response:

15. The provision of assistance at terminals needs to be realistic as it would not be possible for assistance to be provided at unmanned terminals, so we believe it is important that Member States have the ability to designate the terminals and therefore the terminal managing bodies covered by the requirements of the Regulation.

Article 3(11) “cancellation”:

16. Some passenger and local authority representatives felt that requiring at least one reservation to be made would negate any application to local bus services. Two respondents said this could also affect advertised coach services used by passengers on a 'walk on and pay' basis. One passenger representative noted that clarity was needed on the term “non-operation”, since services may be curtailed rather than cancelled entirely.

Government response:

17. The Government believes that local bus services should be excluded from the scope of the Regulation (see paragraph 29). In terms of long-distance services it seems sensible for the provisions to apply to all cancelled services regardless of whether a reservation has been made or not as the service has been timetabled by the operator, so we intend to seek changes through working group discussions.

Proposed new definitions

18. Some stakeholders thought that “accident” needed to be defined as without this they had found it difficult to assess the impact of draft Regulation and were also concerned that the absence of a definition could lead to legal disputes. Respondents also felt that a definition of "terminal" was needed to clarify whether this included bus and coach stops. It was suggested that this should only refer to points where there are a large number of vehicle departures under direct control, rather than every bus stop. One disability organisation also said there should be a definition of "recognised assistance dog" and suggested using the definition in the Equal Treatment Directive.

Government’s response:

19. Whilst we have wider concerns about the liability provisions in Chapter II, as we think civil liability should be determined by national law, we do not feel there is a need to define “accident”. Any definition used solely in the context of this draft Regulation might conflict with definitions elsewhere in UK legislation and might create uncertainty in the law more generally.

20. The Government recognises that some respondents felt that there may be some benefit in including a definition of “terminal”, however, this may not be necessary as the description of the assistance to be provided at terminals in Annex I appears to make it clear that terminals are facilities with cash desks, waiting rooms and embarkation areas, rather than simple bus stops. In addition, Member States would be responsible for designating the terminals to be covered by the Regulation.

21. In terms of the need to define “recognised assistance dog” we do not believe this is necessary because the definition of assistance dog is already well known and defined in existing domestic legislation. The current definition covers all currently known training regimes.

Question 2: Do you have any comments on the proposed scope of the Regulation, in particular should:

a) all urban, suburban and regional services (i.e. local bus services) be excluded from the scope of the Regulation, regardless of whether they are provided under a public service contract or not?

b) international short-distance services that are effectively local bus services be exempt?

22. The majority of respondents to this question agreed that urban, suburban and regional transport should be exempted from the proposed Regulation regardless of whether the services are provided under a public service contract or not, and that international short-distance services that are effectively local bus services should be exempt. Alternatively, they felt that Member States should be able to exclude such services if they took other measures which would provide a similar level of passenger rights, such as other regulatory measures or introducing passenger charters.

23. The application of the Regulation to local bus services was considered inconsistent with the approach to other passenger transport modes such as taxis, private hire vehicles or tram passengers. The requirements to provide information about delays and cancellations were considered unworkable by many respondents in the context of local services with frequent stops. One respondent suggested that in respect of local bus services the draft Regulation should be less prescriptive and simply set out general principles for interpretation by Member States. There was a preference for locally introduced schemes appropriate to each individual market, and it was emphasised that passenger rights should be proportionate to the service operated. One passenger representative group suggested that signing up for passenger rights could become an obligation when receiving Bus Service Operators Grant. A number of respondents argued that some provisions in the Regulation duplicated measures under existing domestic legislation. Two respondents felt that it would be appropriate to have separate regulations for buses and coaches, owing to the differences between them (for example, buses can carry standing passengers).

24. A few respondents suggested that the draft Regulation should only apply to international long-distance services. A couple of respondents thought that domestic express coaches as well as urban services should be automatically exempted from the Regulation as it was argued that operators of domestic express coaches already met the aims of the Regulation through well established conditions of carriage and a code of practice for mobility restricted customers. One respondent suggested adding a 50km distance limit for short-distance international services.

25. Two respondents thought that urban, suburban and regional services should only be exempted if they are provided under public service contracts that provide a comparable level of passenger rights. However, most respondents considered that attaching a public service contract condition would be discriminatory, not only between services within the UK, but also between the UK and other Member States.

26. Some respondents did think that the draft Regulation should apply to all services, to ensure passengers have the same level of rights through the whole

journey and that different passengers on the same vehicle do not have different rights (for example, long-distance coach services often provide stage carriage service). One stakeholder felt that the provisions in chapter III should apply to all buses and coaches. Another felt that the draft Regulation should set a minimum requirement, so that higher levels of service were permitted.

27. One respondent was happy with the Government's approach to exempt local services (as the proposal was structured for long-distance services), but felt that the Disability Discrimination Act (DDA) was hard to enforce on local bus services, and that greater protection was needed for disabled people using such services.

Government response:

28. The European Commission's original proposal recognises the distinction between local bus services and long-distance services, and allows Member States to exempt urban, suburban and regional transport. However, this is only possible if the services are provided through public service contracts that provide a comparable level of passenger rights. This fails to recognise that some Member States markets, such as the UK's, have moved to open competition beyond public service contracts.

29. Whilst the Government recognises that some stakeholders would like the Regulation to apply to all services, we do not believe that an EU Regulation is the best way to set requirements for local bus services. Instead Member States should be able to decide on any requirements that apply, so that they can be tailored to the specific nature of the Member States bus market. We are therefore seeking the exclusion of all local bus services, including rural services and those operating in border areas to and from the Irish Republic that are classed as international operations.

Question 3: Do you see the requirement for passengers to be issued with a ticket to be entitled to the rights under the proposed Regulation causing any problems?

30. Some respondents felt that it would not cause a problem, since the definition of "ticket" in article 3(5) includes "a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form..." However, others thought that it would, especially if the rights relied on provision of a ticket tied to a particular journey (for example, travelcards provide a right to travel but are not linked to a specific journey). There was a consensus that issuing every passenger with a ticket would delay services.

31. Some operators thought that domestic legislation would need to be changed to clarify that the rights did not extend to people travelling without a ticket (for example, because they have a concessionary pass). In addition, some thought that passengers waiting at a bus stop would only have redress in the event of delay if they were already in possession of a ticket, since rights only applied once a ticket had been issued. This would give different rights to passengers purchasing their ticket in advance to those on the same service who paid on boarding.

32. One passenger representative questioned how the requirement to be issued with a ticket fitted with Article 10. They felt that it would not be possible for a disabled person to challenge an operator for not issuing them with a ticket, as they would not have any rights under the draft Regulation until they had been issued with a ticket.

Government response:

33. The Government has serious concerns about the Regulation relying on the concept of a 'ticket' when technological developments mean transport providers are increasingly moving away from conventional tickets. We believe that the requirement for transport operators to issue a ticket could restrict developments in revenue collection, such as smartcards, pre-pay and contactless payments. We also believe that the "conclusion of the transport contract" is not a clear concept and creates confusion. We are looking to work with other Member States on a revised trigger for the rights under the Regulation that requires bus and or coach operators, or local authorities where appropriate, to ensure that "evidence of entitlement to travel" is available to passengers (such as tickets, passes, SMS, electronic messages or electronic records), rather than requiring all operators to issue a ticket.

34. Whether or not the trigger for rights remains as a 'ticket' or 'entitlement to travel' Article 10 would ensure that neither is refused to a disabled person or person with reduced mobility except in very limited circumstances. In our view a passenger who has been refused a ticket could rely on Article 10 and in this way gain access to the rights conferred by the Regulation.

Question 4: Do you see any problems being caused by the requirement for operators to provide non-discriminatory contract conditions and fares?

35. A number of respondents were concerned that the draft Regulation would impact on the ability of local authorities to offer concessionary travel based on residential criteria, including the ability to offer concessions to specific groups (such as police officers and young people) in accordance with locally determined schemes. There was concern that, if these criteria could no longer apply, local authorities would be unable to afford the schemes. Some thought that the provision might be appropriate if the draft Regulation just applied to long-distance journeys, but that it would require greater subtlety and more scope for local exclusions if it applied to local bus services. Some operator representatives felt that it would be discriminatory to include this provision on road transport without it applying on rail.

Government response:

36. The Government wants to ensure that the proposed Regulation does not prevent local authorities providing social tariffs to local residents using public money, including concessions and discounts to particular groups of people. We are therefore seeking an amendment to the text to clarify this situation, both in respect of the Government's mandatory concessionary scheme and local authority schemes.

Question 5: Do you have any comments on the Commission's proposals regarding liability,

37. The majority of respondents did not support the liability provisions in the draft Regulation. However, there was a clear division in the responses given to this question, with those from the bus and coach industry, the insurance industry and local government not supporting the provisions set out in the proposed Regulation, whereas passenger representatives broadly supported them. Some respondents felt that this provision raised questions of subsidiarity. Some felt there was a need to clearly demonstrate the existing detriment to bus and coach passengers prior to the introduction of any of the liability provisions and did not feel that this had been done. Operators felt that the proposals on liability were unduly weighted towards the public and stated that where they are at fault for an incident, they assist customers and their families if they believe that they have incurred loss or additional expenses.

in particular should:

a) an operator be prevented from contesting damages up to EUR 220,000 unless the passenger was at fault?

38. Most respondents did not agree that an operator should be prevented from contesting damages in certain circumstances. Many argued that strict liability did not fit with the existing UK system and that it seemed to run counter to established principles of justice in that an operator would be liable until proven innocent.

39. The amount of incontestable damages was thought by operators to be excessive. There was concern that insurance would not be available or would become prohibitively expensive, leading to costs being passed to passengers through higher fares or reduced services. Small operators were considered to be particularly vulnerable. The risk of fraudulent claims was also mentioned, although one respondent noted that the fitment of CCTV on vehicles had been shown to be an effective safeguard against fraudulent claims for damages.

b) an operator be required to provide advance payments of damages prior to liability being established?

40. Some passenger representatives thought that operators should compensate passengers quickly in advance of liability being established, with the operator, where they are not at fault, claiming damages back from the third party. They felt that it should not be the passengers' responsibility to determine who was at fault. However, most respondents opposed the requirement for advance payments as set out under article 8. There were concerns that requiring payments to be made in advance of liability being established could substantially increase insurance premiums for bus companies, and make insurance for some smaller operators difficult to obtain.

41. Operators queried whether NHS trusts would be able to reclaim costs from the operator and whether the operator may be required to make payments whenever there is an accident involving a bus, regardless of whether they are at fault. They also doubted whether the payments could realistically be recovered if it was later

established that there had been no entitlement. There was also concern that advance payments could create significant cash flow problems for smaller operators.

42. Operators also felt that there would be a disparity with rail operators who, they argued, are relieved of this duty if the accident is due to a third party. Some thought the provisions would impose a significant cost disadvantage for bus and coach operators compared to other road users, distorting the market in favour of private transport. In respect of Article 7 one respondent felt that “dependents” should be defined and costs determined as “reasonable” rather than “necessary”.

c) an operator be relieved of the liability if the accident is as a result of actions of a third party (as currently drafted they could only try and seek redress against the third party through the courts)?

43. While a few respondents thought operators should pay compensation to passengers regardless of whether the operator was at fault, the majority did not support this view. It was felt that placing blame on the operator in every case would be disproportionate, although it was acknowledged that it would be less convenient for passengers to claim against a third party.

d) maximum compensation limits be set for loss or damage to hand luggage, and are the current limits proposed appropriate?

44. Concerns were expressed that operators would be unable to know whether a piece of luggage was being carried or not, especially since hand luggage was not under the control of the operator. This could leave operators open to fraudulent claims, where luggage was not being carried or its value was exaggerated. Operators noted that lower limits were sometimes set for this reason in their conditions of carriage, and that passengers were able to take out insurance against loss. One operator commented that they were not aware of any evidence that existing conditions of carriage deterred people from using bus and coach services. However, another respondent felt that passengers should not be expected to buy insurance on their own behalf unless it was provided at marginal cost.

45. If the liability provisions remained, a maximum limit was generally welcomed, although some operators felt the proposed limit was too high. Passenger representatives agreed with the proposed liability limits for claims, and one argued that they should be consistent with other modes of transport. One respondent argued that passengers should be compensated for any cost imposed on them as a result of an accident where they were not at fault, and that higher compensation should be payable if an operator was negligent. Others argued that passengers should have to prove the damage or loss arose from the negligence of the operator.

46. Insurers felt that the provisions went against the existing principle of full compensation by setting some maximum compensation levels. They felt that setting minimum and maximum levels risked under - or over - compensating passengers. They also commented that Article 7 did not specifically provide for damages for pain, suffering and loss of amenity. In their view, this could lead to claims being brought under common law, leading to potential double compensation.

Government response:

47. The Government has significant reservations about the liability provisions. The UK has well established fault-based principles for determining liability for accidents. The provisions would cut across these, effectively creating a separate system in relation to determining liability and compensation for road traffic accidents involving one particular type of road user (bus and coach operators). This would create confusion, uncertainty and unfairness in UK law. The provisions on damages in the case of death or injury to passengers which prescribe exactly what heads of damage can be compensated could also lead to bus and coach passengers being under-compensated in comparison with other road users.

48. Some respondents argued that the introduction of strict liability for claims up to EUR 220,000 would mean that a passenger would always know who to claim compensation from. However, we do not believe that the evidence supplied in response to our consultation or the evidence in the European Commission's impact assessment that accompanied the proposal, justifies the imposition of strict liability regime for claims up to a certain level. In addition, the introduction of compulsory advance payments before liability is established would be unfair to bus and coach operators, as they share the roads with a number of other road users and accidents will often be caused by acts or omissions of third parties.

49. Similarly, in terms of an operator's liability for loss or damage to luggage the Government believes that an operator should not be liable if the loss or damage was caused as a result of an action or omission of a third party. Recognition also needs to be given to the fact that often an operator does not check passengers luggage in and so would have no record of what is being carried. With regard to the introduction of maximum compensation levels the Government believes that where the loss or damage is the fault of the operator that a passenger should be fully compensated, but recognises that this needs to be balanced by the fact that not having a limit might encourage fraudulent claims.

50. For these reasons, we are seeking the removal of the chapter or revisions to the text to provide flexibility to accommodate the different approaches that Member States have in respect of their civil liability systems. In particular we are seeking changes so that an operator would not be liable in the case of injury or death or loss/damage to property where the accident was the result of fault wholly or in part of a third party.

Question 6: Do you think passengers are already adequately covered for personal and property damage under existing European legislation on motor insurance?

51. Operators felt that there was already adequate protection against losses for third party liability, and they should not be held responsible for injuries caused to passengers by vandalism or anti-social behaviour. Major operators self-insure against risks and increased costs are likely to be passed onto passengers. Operators felt that, in most instances, insurance legislation does not cover personal property, so they publish conditions of carriage to cover this.

52. Passenger representatives felt that passengers should be compensated quickly and be protected from protracted disputes between the operator and a third party. They were concerned that, since bus operators were not liable for injuries to their passengers caused by third parties, passengers may find it hard to pursue the person at fault. It was suggested that the Motor Insurance Bureau already acts as a last resort for uninsured or untraceable motorists. Two respondents felt that the level of insurance in the Motor Insurance Directive was inadequate.

53. Insurers felt that the proposal did not acknowledge the existing requirements under the fifth Motor Insurance Directive, requiring insurers to make an offer of compensation to the claimant within three months of a claim being presented, where liability is not contested and damages have been quantified. The requirement to pay interest where claims are not speedily resolved already acts as an incentive in their view and they felt that further regulation was unnecessary.

Government response:

54. The Government believes that when introducing new liability and compensation provisions consideration needs to be given to how these fit with the existing five motor insurance Directives that require Member States to put in place effective measures to deal with compensation claims in respect of road traffic accidents. Whilst liability and motor insurance are different issues, if the Regulation was to overlap or conflict with existing procedures and remedies, this would create uncertainty and confusion to passengers, and unfairness to bus and coach undertakings, who would be treated differently to other road users. There is some conflict between the motor insurance Directives and the proposed liability provisions and so we are seeking to remove this.

Question 7: Do you have any comments on the Commission's proposals regarding disabled people and people with reduced mobility,

55. Many respondents singled this out as an example of where the provisions would be inappropriate for local bus services. A couple of respondents saw no need for this extra legislation, given the existing disability discrimination legislation already in place in the UK. Some respondents thought that there should be a test of reasonableness, so that an undue burden was not placed on operators. There were some concerns from operators about health and safety issues. Disability representatives would prefer the Regulation to refer to guide and assistance dogs rather than animals.

in particular those that:

a) prevent operators, their ticket vendors and tour operators, from refusing to accept a reservation, issue a ticket, or board a passenger on the grounds of disability or reduced mobility?

56. A number of respondents were concerned that this would give disabled people and people with reduced mobility an absolute right to travel. They argued that drivers may occasionally need to deny access (for example, if the wheelchair space is already occupied by another wheelchair or push chairs), especially on heavily loaded vehicles, since local bus services are not booked in advance.

57. A few respondents felt that if the operator required a passenger to be accompanied by another person that the operator should pay the cost of the extra person. One respondent commented that it would not be possible for people requiring care during their journey to travel on their own, since staff cannot drive a bus and also act as a carer.

58. Operators felt that the requirement to make alternative arrangements and refund a disabled person who could not be carried could be abused to obtain free taxi journeys. One passenger representative considered that it was not possible to accommodate every design of wheelchair. They also noted that only wheelchairs can be carried which meet the specifications set out in UK regulations and that most mobility scooters cannot be carried on safety grounds.

59. One respondent highlighted that the requirement to offer alternative services would have cost implications and was inconsistent with rights in other modes. They thought that the requirement to provide information immediately would not be practical for local and regional transport.

60. There was concern that the draft Regulation would conflict with the staged introduction of accessible buses and coaches set out in existing UK legislation, as the non-availability of suitable vehicles would not be a reason not to carry disabled people. Some respondents felt that the EU should not intervene as these dates had already been set. One respondent said the definition of persons with reduced mobility was much wider than currently set out in UK legislation and gave an unreasonable expectation of adaptation to personal needs that is unsuited to local bus services.

61. A few respondents pointed out that barriers to boarding were not always within operators' control and could be caused by the layout of the road, or illegal parking stopping buses from drawing parallel to the kerb.

b) require operators to produce non-discriminatory access rules that apply to the transport of disabled persons and people with reduced mobility?

62. Disability representatives thought that information should be made available to disabled people in accessible formats. However, some respondents queried whether it would be cost effective to produce all publicity in an accessible format and argued that operators should not be required to go to considerable expense to make their services accessible to wheelchair users when alternative services were available at comparable cost.

63. An operator commented that their existing code of practice sets out that assistance is provided at major coach stations, with reasonable assistance provided at other locations in accordance with the Disability Discrimination Act.

c) require operators and terminal managers to provide assistance particularly with regards to the requirements set out in Annex I and II?

64. Many respondents felt that these provisions were unsuited to local bus services, and were too widely drawn, especially where they related to assistance during the journey. There were concerns that it was not possible to provide additional assistance at all locations and that it would not be acceptable for a bus driver to provide all the assistance at Annex I, given health and safety considerations. It was noted that drivers on local bus services have to stay in the cab for safety and security reasons. However, disability organisations welcomed the provisions introducing a right to assistance.

65. Some respondents thought that the definition of "designated terminal" needed to be carefully assessed to ensure it is practical. Many respondents questioned whether "terminal" included bus stops, since these are usually unstaffed. Some respondents felt that member states should designate terminals in consultation with disabled groups. However, one respondent thought the ability of Member States to designate terminals might significantly reduce the scope of the draft Regulation. They were also concerned that some operators might change their route to avoid terminals where assistance must be provided, and suggested that all stops designated for inter-urban area travel should be considered.

66. The time requirements attracted a variety of comments. One respondent felt that these should not be made a condition of carriage. Others thought that the notification period should be reduced from 48 hours to 24 hours, or even 20 minutes. One respondent thought that if an operator runs a pre-booking system, disabled passengers should not be required to book further in advance than other passengers. One respondent queried the requirement for a passenger to already have a ticket to obtain assistance rights under the Regulation, since these should also extend to passengers who turn up on the day.

d) require operators to pay unlimited compensation where wheelchairs or other mobility equipment is lost or damaged and, if necessary, for replacement to be quickly provided?

67. A number of respondents thought the provision of unlimited compensation was inappropriate. One respondent thought that compensation should be limited to the damage or loss incurred, and pointed out that rapid replacement was unlikely to be achievable where terminals are in remote areas. One respondent thought that the compensation level was suitable, provided that compensation did not exceed the value of the equipment being replaced, while one thought that the requirement should cover equipment used by blind and partially sighted people, such as canes. One respondent thought the wording should be amended to ensure any replacement wheelchair is appropriate for its user.

Other comments on the disability chapter

68. Many respondents welcomed the requirement for operators to provide their staff with appropriate training, although it was noted that many bus companies do already include such training within induction and Certificate of Professional Competence courses. One respondent suggested providing this training within the framework of the Certificate of Professional Competence Directive. Operators felt that the proposals on the carriage of disabled people were unduly weighted towards the public. There were concerns from disability stakeholders that the Regulation would require disabled people to book in advance to use bus services. They felt that the existing Disability Discrimination Act was not always easy to enforce. There was also a need to distinguish between scheduled services and coach tours, and to use consistent terminology.

Government response:

69. The provisions in respect of disabled people and people with reduced mobility would largely build on existing UK domestic legislation. The Government supports the aim of ensuring equitable treatment for disabled people and people with reduced mobility, in a manner that does not impose unreasonable requirements on the industry or lead to a slowdown in the progress made so far. Some of the comments related to the appropriateness of some of these provisions to local bus services; as set out in paragraph 29 the Government is seeking the exclusion of all local bus services from the scope of the Regulation, which should address these concerns.

70. Some respondents thought that the proposal would give disabled people and people with reduced mobility an absolute right to travel. We do not agree with this interpretation. In our view the draft Regulation would only prevent an operator from declining to embark a person on the grounds of their disability or reduced mobility, it would not prevent an operator refusing to allow a disabled passenger onto the bus on the grounds that the carrying capacity would be exceeded. This would be consistent with the current situation in the UK where a driver does not have to allow the wheelchair user on if the carrying capacity would be exceeded. But they must allow a wheelchair user to board the bus when the wheelchair space is unoccupied, unless the wheelchair is too large or if they think it is unsuitable to have on the bus.

71. Through working group discussions it has become clear that it is not the intention for the proposed Regulation to require operators or terminal managing bodies to change infrastructure to provide fully accessible vehicles or terminals. So the draft Regulation should not conflict with the staged introduction of accessible buses and coaches set out in existing UK legislation.

72. In terms of an operator being allowed to require that a disabled person or person with reduced mobility is accompanied by another person who can provide them with assistance, this is only possible in very limited circumstances 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 operator their licence.

73. Where a passenger has been denied embarkation on the grounds of their disability or reduced mobility the Government believes that the passenger should have the choice of the right to reimbursement or reasonable alternative transport services, where this is possible, rather than both.

74. The Government supports the requirement for operators to produce non-discriminatory access rules, in co-operation with disability representative groups and believes that these rules should be made available in accessible formats on request.

75. The Government supports the provision of assistance to disabled people when travelling by bus or coach, but believes that it needs to be proportionate and practical. The Government is concerned that there could be practical difficulties with a driver providing assistance, particularly during the journey, as most buses and coaches operate with only one member of staff, so providing assistance throughout the journey will cause undue interruption. There could also be conflict with health and safety legislation. For example, drivers can only lift luggage of a certain weight, determined by their age and height, and drivers' on regular services over 50km have to comply with the EU drivers' hours rules under which they are unable to do any other work when they are on a break or rest period. It would also not be practical to require assistance to be provided at unmanned stations or bus stops. We intend to consult on the terminals at which assistance would be provided.

76. In terms of the notification periods for providing assistance, whilst the Government recognises that these may seem long they simply set a minimum standard and there would be nothing stopping the operator and passenger agreeing a shorter period, there is also a general expectation that operators and terminal managing bodies would try to provide the necessary assistance even when the passenger turns up on the day. So we do not propose to seek a reduction in time.

77. The Government agrees that all staff who deal with the public should have suitable disability awareness training. However, drivers are already required to have disability training under European Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, and whilst the Directive does not go into the detail set out in the Regulation, we believe that driver training should be provided through that Directive. Otherwise it would be counter to the 'simplification' agenda for European legislation.

78. The Government believes that staff working for terminal managing bodies should also be given disability awareness training if they provide direct assistance to disabled people or deal directly with the travelling public. However, the training requirements need to be proportionate. For example someone who works in a call centre would not need the same type of training as someone providing direct assistance to a disabled person. Consideration also needs to be given to the detail of the required training in terms of its practical application. For example, it would not be practical for all drivers to be trained in sign language to meet the training requirement for interpersonal skills and methods of communication.

79. The Government agrees that an operator or terminal managing body should be liable for loss or damage to wheelchairs and mobility equipment when the equipment is in the operators care, but they should not be liable where it is the fault of a third party, or as a result of the negligence of the passenger. Passengers should be fully compensated, but we consider that rather than unlimited compensation it would be more appropriate for compensation to focus on the reasonable cost of replacement or repair of equipment and any inconvenience caused to the passenger.

Question 8: Do you have any comments on the Commission's proposals regarding operator obligation in the event of disrupted travel in particular:

a) the provision of alternative transport services, or if that is impractical, to be informed of alternative transport services provided by competitors, and the proposed compensation levels?

80. Many respondents felt that this demonstrated how the scope needed further consideration. They pointed out that it was not uncommon for local bus journeys to be cancelled. It was queried whether a bus leaving in one hour would be considered a reasonable alternative to a cancelled bus due to leave now. Operators were concerned that if it was not, they would face a considerable extra burden and felt it was unreasonable to incur extra costs through factors outside their control.

81. It was noted that some operators already provided alternative transport services or advice about competing services. While some respondents thought it reasonable to provide compensation when long-distance services did not run, it was argued that this should only be in lieu of, rather than in addition to, providing alternative transport. It was also considered that the service provided by the alternative transport should not exceed what was due to be provided by the scheduled service, and that the level of compensation should be limited to a maximum of 100 per cent of the ticket price.

82. For local bus services, some argued that the requirement should only apply to the last bus of the day. It was noted that some operators already make provision if the last service is cancelled and suitable alternative services are not available.

83. However, a number of respondents supported the proposal, although there was felt to be a distinction between what was appropriate for bus and coach services. A few respondents felt it would be unfair if rights only applied where the delay occurred on or before the start of their journey. It was noted that a passenger could find it difficult to verify a claim that they had waited for a service that did not arrive if they had not already bought a ticket (for example, where the intending passenger has a concessionary pass). Although they might want compensation, there would technically be no ticket to refund. A minimum compensation threshold was suggested for practical reasons on local bus services.

84. It was suggested that every bus stop should carry the name and contact details of the operator, and a timetable, so that the passenger could contact the operator to find out about delays, since it would be expensive to provide detailed information at every stop. One respondent commented that it was essential that information was provided in an accessible form. Some respondents pointed out that, in rural areas, a taxi may be the only alternative whereas in urban areas, there may be too many alternatives to reasonably communicate. One respondent commented that alternative transport offered to disabled people should be accessible. Another felt that the compensation provisions compared poorly with those provided in practice by the rail industry.

85. One respondent said any passenger whose journey is interrupted or delayed should be entitled to compensation for all out of pocket expenses, except where they

were already covered by travel insurance policies on long-distance international services.

b) the requirement to provide information in the event of delay?

86. The requirement to compensate passengers for a lack of information about bus cancellations and the alternatives was thought by many respondents to be unrealistic, given the size and scale of the UK bus network. Although it was acknowledged that this was best practice for operators, it was only feasible at locations where messages can be relayed to passengers, such as at principal stopping points. The use of real time information displays at terminals and major bus stops may be appropriate but it was thought that these may not be affordable for smaller operators.

87. One respondent thought that the reference to terminal managing bodies should be deleted since it was not possible for them to know the arrival times of coaches. Some respondents thought that the requirement could be exploited unreasonably, while a few noted the existing provisions under the Local Transport Act.

88. Some respondents supported this requirement but pointed out that where circumstances are outside the operator's control, they do not know how long delays will be. One respondent supported this requirement but thought providing information an hour before the scheduled arrival was impractical on shorter journeys.

89. One respondent argued that this requirement should include both audible and visual information, conveyed by suitably trained staff. For disabled people, it was also considered essential that assistance was available to get to the next bus stop or help with luggage.

c) should a distinction be made between factors within and outside of an operator's control?

90. Although there was broad support for a distinction, some respondents commented that it would be difficult to determine which factors were within an operators' control. Many felt it would be unfair for operators to be held responsible for factors outside their control, such as extreme weather, although one respondent felt there was no reason for a distinction since the effect on the customer is the same regardless of the cause of delay. It was noted that, unlike the rail industry, the bus industry does not have its own dedicated rights of way and has no control over infrastructure.

91. It was noted by one industry body that the provision of information was a local authority responsibility. Where this is not kept up to date, they felt it would be wrong to require operators to provide compensation. They were also concerned that it would be difficult to distinguish between responsibilities where factors beyond an operator's control led to later services being cancelled to comply with drivers' hours Regulation.

92. Some respondents argued that a further distinction should be drawn between routine factors and exceptional circumstances. It was suggested that an exemption should only apply in exceptional circumstances, in a similar way to aviation, with guidance issued detailing what was considered to be within an operator's control. Although traffic congestion was suggested by some as an example of an exceptional circumstance, others argued that this was not always the case, and that this was routine in many cases.

Government response:

93. The Government believes that when considering the obligations to be placed on operators in the event of interrupted travel recognition needs to be given to the fact that operators share the infrastructure on which they operate with a number of third parties. Any obligations also need to be proportionate and realistic in terms of what a bus or coach operator can reasonably be expected to provide, particularly where a passenger is waiting for the service at an unmanned station or stop. As set out in paragraph 29 we are seeking the exclusion of all local bus services and if this was achieved concerns about the suitability of the provisions to such services would be removed.

94. For long-distance services we believe that where a service is cancelled or subject to long delays at departure, where practical, passengers should be offered the choice of travelling on an alternative service, and if they do not wish to accept this or it is not practical for the operator to offer alternative transport, they should be reimbursed the price of the ticket. If an operator fails to do this it would seem fair for the passenger to be entitled to compensation.

95. Some respondents thought that the provisions should apply to delays at arrival, as well as to cancellations and delays at departure. Careful consideration needs to be given to the potential road safety implications of introducing compensation for delays in arrival as it might put drivers under pressure to break speed limits in order to meet the timetable. In addition, it would not seem reasonable for an operator to be held responsible for exceptional circumstances outside of their control that have led to a delay during the journey, such as severe weather, road traffic accidents. Therefore, the Government would need to balance these factors when deciding whether to support the inclusion of provisions providing compensation for delays on arrival.

96. We agree that it is important for passengers to be informed of delays, but these requirements need to be practical in their application. For example, terminal managing bodies would be unable to meet the current requirement to inform passengers of delays within the specified time periods, as often they would not know how late a service would be, until the coach has actually arrived at the terminal. Equally it would be difficult for a driver to estimate how long a coach would be delayed by a road traffic accident. The provision of information at unmanned roadside stops would also be difficult, although it should be possible for the contact details of the operator to be provided at the stop so that the passenger can contact them for information, although even then the operator might not know of the delay if they do not have direct contact with their drivers. We will aim to ensure that the requirements are reasonable.

97. Ideally where possible the information should be provided in audible and visual formats, whilst we are looking to encourage the use of audio visual equipment

on buses and coaches, we do not believe the Regulation should make the use of such equipment mandatory.

Question 9: Do you have any comments on the Commission's proposals regarding information for passengers and handling of complaints?

Article 24 – right to travel information

98. Although the requirement to provide information in accessible formats was welcomed by some respondents, most respondents felt this needed to be qualified by a reasonableness test as it would be impractical to provide Braille and audible information at all stops. Disability organisations emphasised the need to provide information in accessible formats. One respondent thought the draft Regulation should cover whether music should be allowed on coaches.

Article 25 – information on passenger rights

99. Some respondents felt that it would be unduly onerous to provide information about passenger rights during the journey. One respondent argued that it would cause delays if rights had to be recited at each stop to boarding passengers.

Article 26 – complaints

100. Bus operators commented that this was less demanding than their existing code of practice.

101. One passenger representative wanted operators to publish an annual complaints report since they felt that this approach had been effective in the rail industry. They also suggested that the Traffic Commissioners should decide if a complaint should be upheld. A few respondents thought an independent arbitrator was needed when a complainant is dissatisfied with the response received.

102. One respondent supported the provision that a complaint should be upheld if a response is not received. However, they queried whether redress, including compensation, would automatically follow in these circumstances. One disability representative emphasised that submissions and responses should be in an accessible format.

Government response:

103. The Government supports the requirement for passengers to be provided with information throughout their journey, including the provision of information in accessible formats on request, provided that the requirement is proportionate and does not impose an unreasonable burden on operators.

104. The Government believes that all operators should have a complaints handling mechanism as a matter of good practice to deal with complaints about operational issues such as the issues covered by chapters III to V on accessibility and the provision of information, but does not believe that the complaints system referred to in article 26 should cover issues relating to the liability of operators under chapter II, as making an insurance claim is a completely separate process. We do not think the proposed Regulation should require operators to provide an annual complaints report as we believe this should be left to Member States to decide.

Question 10: Do you have any comments on the Commission's proposals regarding enforcement and national enforcement bodies?

105. There was little enthusiasm for a separate enforcement body and operators in particular felt that a national enforcement body was unnecessary. There was broad agreement that an existing body, such as the Traffic Commissioner, would be best placed to take on such a role, although one respondent argued that it should be entirely independent of existing bodies. There were also concerns about how an enforcement body would be funded.

Government response:

106. The Government has concerns over the provision requiring the designation of a body or bodies responsible for the enforcement of the proposed Regulation and how this fits with a passenger's right to complain about an infringement of the Regulation.

107. Whilst a designated enforcement body should be obliged to ensure that operators are complying with the requirements of the Regulation, we do not believe that it should be the first point of contact for a passenger with a complaint about an alleged infringement of the Regulation. We believe that passengers should use the complaints mechanism set up under article 26 of the Regulation to complain to the operator in the first instance. If the passenger is unhappy with the response, then they should be able to refer the matter to an appeals body, which may or may not be the designated enforcement body. In considering whether an operator is complying with the Regulation, the designated enforcement body may need to consider how operators deal with complaints, but it would not necessarily need to deal with complaints itself.

108. Article 28 requires the designated enforcement body to publish a report on 1 June each year on their enforcement activity the previous year and to keep statistics on individual complaints for up to three years. We do not believe that the proposed Regulation should impose a date on which a report should be published, it should be up to Member States to decide. We also do not see the need to keep records for three years, and so will be seeking changes to the proposed Regulation.

109. The Government will consider who should enforce the Regulation, and how, once the details of the Regulation have been finalised. In terms of the penalties to be applicable to infringements of the Regulation we are concerned that penalties would be passed on to the passenger through increased fares or reduced frequency of services.

Question 11: Do you have any comments on the costs and benefits identified in the Government's initial impact assessment?

Please give supporting evidence wherever possible (monetary figures would be welcomed). In particular, it is important that we identify the impact on local bus services (including local cross-border services in Northern Ireland) in order to provide evidence of the potential consequences of the various provisions on such services if they are not excluded from the Regulation.

110. Operators and insurers have worked with the Department to develop the impact assessment further, using cost figures supplied in response to the consultation and afterwards. The Department will continue to update its impact assessment as the proposal develops.

111. Many respondents expressed concern that the cost of meeting the provisions would greatly increase operating costs. They were concerned that the requirements would lead to higher fares, especially if insurance costs rose as a consequence. It was argued that the measures would be a disincentive for operators, especially smaller ones, to continue providing services and that marginal rural services would be most at risk. Similar Regulations which apply to air and rail were not thought to be directly comparable as buses and coaches share their infrastructure with a great many and variety of third party users, which is not the case for air and rail.

112. Operators expressed concern that the costs of insuring the scheme could make operations unviable, and felt it was unlikely that operators could resource such a large payment up front. Advance payments of £20,000 were thought likely to occur twice per year and EUR 220,000 exceeds the purchase price of a new double-decker bus. Increased premiums would be borne by passengers paying increased fares.

113. Operators were concerned that a generous package of rights could be open to fraud, particularly in urban areas. Manufacturers were concerned that changes to legislation can have a short-term effect on the vehicle market.

114. Some passenger representatives felt it was unrealistic to expect that costs would not increase, and that benefits to passengers must be proportionate to any increase in costs to the operator. However, others felt that providing a 'fair deal' for passengers would improve the functioning of the market. There was a need to ensure that socially necessary services remained viable. Local authorities were concerned that they may have to fund services which were no longer commercially viable, and that tender prices would increase. Disability organisations considered that the costs of making vehicles accessible were already being met in the UK under existing accessibility regulations.

Government response:

115. Where respondents provided details of the impact of the proposed Regulation on their business this has been fed into the Impact Assessment.

Outcome and next steps

116. Most respondents felt that the proposed Regulation did not achieve a reasonable balance between the rights of passengers and the economics of service provision. There was concern from operators that the proposals could make insurance extremely expensive, assuming cover could be obtained at all, and could force companies out of business. There was also concern that the rights to receive damages would be open to abuse and could lead to fraudulent claims. Passenger representatives gave qualified support to the concept of passenger rights but acknowledged that, as drafted, the proposals could pose practical difficulties in the provision of some services. They suggested that passenger rights could be delivered through a different mechanism. However, disability organisations felt the draft Regulation provided more consistent rights for disabled people across Europe.

117. Some strong objections were received about the provisions of the draft Regulation, particularly in relation to the scope of the Regulation and the liability provisions. Whilst supporting the accessibility and information aims of the draft Regulation the Government does not believe that an EU Regulation is the best approach to addressing issues in respect of local bus services, as any such measures need to reflect individual Member State's local bus markets. The Government also opposes the liability provisions as we do not believe there is significant justification for a change to how bus and coach operators are treated, as compared to other road users. Our negotiating position will reflect the Government's responses set out in this document, with the main aim to ensure that, as far as possible, the final proposal is proportionate and realistic in its application.

List of respondents

Arriva
Association of British Insurers
Association of Local Bus Managers
Association of Transport Co-ordinating Officers
Bus Users UK
Cardiff Bus
Coach Operators Federation
The Consumer Council
Confederation of Passenger Transport
Disabled Persons Transport Advisory Committee
East Riding of Yorkshire Council
Eurolines
Federation of Passenger Transport (NI)
Go-Ahead
Guide Dogs for the Blind
London TravelWatch
National Express
Passenger Focus
PTEG
Reading Transport
Rookley and Wroxall Parish Councils
Rossendale Transport
RNID
Scottish Accessible Transport Alliance
Senior Traffic Commissioner
Society of Motor Manufacturers and Traders
Stagecoach
Translink
Transport for London
TravelWatch East Midlands
TravelWatch South West
UK Bus
Unite
and 4 members of the public