



Memorandum of Understanding on accessible rail replacement vehicles Office of Rail and Road and the Driver and Vehicle Standards Agency

Parties to this Memorandum of Understanding

1. This Memorandum of Understanding on Public Service Vehicles used during rail disruption (MOU) is between the Driver and Vehicle Standards Agency (DVSA), acting on behalf of the Secretary of State for Transport, and the Office of Rail and Road (ORR).

Purpose and Scope

2. Its purpose is to:
 - a. ensure effective coordination and cooperation between these organisations in relation to the regulation of accessible rail replacement public service vehicles (PSVs); and
 - b. to provide clarity for passengers, government, and the respective regulated industries about the organisations' specific areas of responsibility, and how they will work together to monitor and uphold the regulatory requirements and relevant legislation in this area.

The MOU covers the following areas:

- c. Joint objectives and principles
- d. Roles and responsibilities
- e. Rail replacement vehicles: relevant legislation and regulatory requirements, monitoring and enforcement
- f. Joint working
- g. Data sharing

- h. Review and amendment of this MOU
 - i. Annex A: Definitions
 - j. Annex B: Details of data sharing conduct and compliance
3. The MOU is a voluntary agreement. The agreement is not binding and is not intended to create any legally enforceable rights, obligations or restrictions.

Joint objectives and principles

4. Both DVSA and ORR have specific responsibilities for enforcement that are relevant to the accessibility of PSVs including for disabled passengers and passengers with reduced mobility. Ensuring PSVs used in rail replacement services are compliant with the relevant legislation is the principle objective that will inform the cooperation and communication between the two organisations, and all aspects of this MOU.
5. DVSA and ORR will abide by the following principles with regards to how they communicate and cooperate in the regulation of the provision of accessible rail replacement services:
- a. **Transparency:** This MOU is designed to provide transparency and clarity about the organisations' respective responsibilities, and how they will work together to meet those responsibilities. DVSA and ORR will be open and transparent with each other, with the industries that they regulate and with passengers, and will be clear about the development of regulatory requirements, monitoring and enforcement.
 - b. **Consistency:** the accessibility requirements for road and rail may share a common objective and some important features, but they are different in some of the detailed requirements and respective regulatory frameworks. DVSA and ORR will work together to facilitate, so far as possible, a consistent application of the relevant law and regulatory policy in terms of the outcomes for passengers of rail replacement services, and expectations of industry.
 - c. **Accountability:** This MOU sets out how DVSA and ORR hold the bus and coach and rail industries to account for the provision of accessible rail replacement services. It also sets out standards for conduct between the two organisations
 - d. **Confidentiality:** Both Parties agree that they will treat all data and information shared under this MOU and its associated operation as confidential. Neither Party will, without the written consent of the other Party, communicate or disclose to any other Party data nor information shared with the other Party under this MOU, unless required to do so by law.

Respective roles and responsibilities with relevance to the provision of accessible rail replacement vehicles

6. DVSA is an executive agency of the Department for Transport, responsible for maintaining technical, competency and safety standards for drivers, vehicles and operators in Great Britain. This includes supporting the Traffic Commissioners for Great Britain regulator to license and monitor companies who operate lorries, buses and coaches, and to register local bus services.
7. With regards to accessibility, DVSA is responsible for the certification and enforcement of the Public Service Vehicle Accessibility Regulations 2000 (PSVAR), vehicle PSVAR safety (including operation of accessibility related equipment), driver conduct and the need for operators to correctly train relevant employees¹. This is supported by the Equality Act 2010.
8. DVSA is not responsible for enforcing passenger train operator licence conditions.
9. ORR is an independent, non-ministerial government department responsible for the economic and safety regulation of Britain's railways, and the economic monitoring of Highways England.
10. With regards to accessibility, ORR is responsible for two main areas:
 - a. ORR is the enforcing body for rail accessibility legislation in GB. This includes law that sets out the accessibility standards which rail vehicles must meet², and design standards for accessibility in stations.
 - b. ORR also uses train operator licences to regulate operators. Under licence condition 5, ORR requires all licensed passenger train operators to produce and comply with an Accessible Travel Policy (ATP). The ATP must describe the arrangements and assistance that an operator will provide to protect the interests of disabled people using its services. This includes booked assistance,

¹Public Service Vehicles Accessibility Regulations 2000 (PSVAR) www.gov.uk

The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (Driver Conduct Regulations) www.legislation.gov.uk

² Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (RVAR 2010) set out the accessibility standards with which new non-mainline (and older rail vehicles as and when they are refurbished) must comply.

Persons of Reduced Mobility National Technical Specification Notices (PRM NTSNs) covers heavy rail.

Further information on rail vehicle accessibility standards can be found on www.orr.gov.uk

information on accessibility of rail replacement vehicles, and training for staff³. ORR is responsible for approving ATPs, and monitoring operator compliance with their provisions.

11. ORR is not responsible for enforcing PSVAR compliance by PSV operators.

12. Clause 8 and 11 confirm the legal basis for the sharing of data between ORR and DVSA.

Rail replacement vehicles: relevant legislation and regulatory requirements, monitoring and enforcement

13. Where timetabled rail services do not operate due to disruption (for example, due to maintenance and engineering work) then train operators will typically provide replacement travel arrangements for affected passengers.

Requirements for train operators

14. Under its ATP licence condition and related guidance⁴, ORR requires the following of train operators:

- a. Taking appropriate steps to procure accessible buses and coaches that are compliant with PSVAR for use as rail replacement vehicles; this aims to ensure operators make maximum and most efficient use of available vehicles, including through annual reviews of contracts; and
- b. Proactive provision of information to passengers on the accessibility of rail replacement services, and on any alternatives that may be more appropriate.

15. ORR will monitor compliance with these provisions and consider whether further action is requisite in line with its published policy⁵.

16. ORR intends to collect and publish the following data routinely as part of its standard compliance monitoring activity from April 2021 onwards:

- rail replacement bus and coach PSVAR compliance;
- accessible alternative transport used; and

³ www.orr.gov.uk

⁴ www.orr.gov.uk

⁵ www.orr.gov.uk

- complaints received by train operators where the alternatives provided have fallen short of expectations of safety, comfort and timing.

17. In addition, ORR conducts ongoing research of the experience of passengers that book assistance, including those that experience disruption⁶.

Requirements for operators of PSVs

18. The Public Service Vehicle Accessibility Regulations 2000 (PSVAR) apply to all new PSVs introduced since 31 December 2000, with a capacity exceeding 22 passengers and used to provide a local or scheduled service.

19. PSVAR requires in-scope vehicles to comply with Schedules 1 and 2 (buses) or 1 and 3 (coaches), which provide requirements for features such as wheelchair accessibility and securing, accessible signage and destination displays, communication features and priority seating where required. Compliant vehicles are subject to a PSVA2 certificate of conformity.

20. The Secretary of State may grant special dispensations where necessary, allowing operators of rail replacement services to apply for authorisations to operate non-compliant buses and coaches.

21. Unless operated under such a special authorisation, it is an offence under s.175 of the Equality Act 2010 to use a regulated PSV for a scheduled or local service that doesn't comply with PSVAR. The maximum fine is £2500.

22. The DVSA undertakes routine roadside compliance checks, investigating any offences found. These checks are typically conducted on a planned proactive basis (for example, when large scale rail engineering works are scheduled). The DVSA will also consider complaints received from third parties, and will investigate where necessary. Any non-compliance on the part of PSV operators and / or driver conduct issues found are reported to the relevant Traffic Commissioner for consideration of regulatory action.

Joint working – responsible individuals

23. In practice, most contact and communication between DVSA and ORR is likely to arise in the context of day-to-day operations.

24. To ensure clear lines of communication and coordination DVSA and ORR will each nominate relevant experts to act as points of contact. These individuals will meet

⁶ www.orr.gov.uk

regularly, no less frequently than twice a year. Each organisation will ensure that, when appropriate, succession arrangements are made to facilitate continuity.

25. Appropriate senior executives of DVSA and ORR will be responsible for reviewing the ongoing success of this MOU in ensuring effective cooperation. They shall meet once a year to review it, and shall have delegated authority from the signatories to recommend improvements to how the organisations cooperate at a working level.

Table 1 Arrangements for communication between ORR and DVSA

DVSA nominated expert	ORR nominated expert	Frequency of meeting	Purpose of meeting
DVSA Head of Enforcement Policy	ORR Deputy Director Consumer Policy	Annually	To review the success of the MOU in ensuring effective cooperation between DVSA and ORR, to make recommendations as appropriate.
DVSA Enforcement Policy Specialist for PSVAR	ORR ATP Consumer Policy Manager	Twice a year (or more frequently as required).	To discuss current and emerging or important monitoring and enforcement issues.

26. Where appropriate, the nominated points of contact from each organisation will agree and jointly coordinate discrete pieces of work focusing on specific deliverables, drawing on the expertise of their colleagues where appropriate and proportionate.

27. The nominated points of contact from each organisation will be responsible for ensuring their respective chief executives and other colleagues are kept informed of work in this area.

Data sharing

28. ORR is not responsible for enforcing PSVAR compliance by PSV operators. ORR will pass to DVSA any intelligence or data it receives on PSVs used in rail replacement services that are not compliant with PSVAR nor operate under a special authorisation to the extent that ORR considers it appropriate to do so, and legislation permits. Where the intelligence originates from a complaint made to ORR by a third party (rather than a train operator), which may include an individual, ORR will usually advise such third party to make direct contact with DVSA. In instances where ORR chooses to share such

data (which may include personal data) with DVSA, it will only do so if it has consent from the third party.

29. DVSA is not responsible for enforcing passenger train operator licence conditions. DVSA will pass to ORR details of multiple cases of non-compliance with PSVAR during a single instance of rail disruption (i.e. not an isolated instance of a single vehicle).
30. Full details of data sharing, including how ORR and DVSA shall abide by the relevant legal requirements, can be found at **Annex B**.

Escalation Procedures

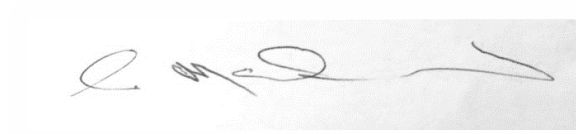
31. If either Party has any issues, concerns or complaints about the MOU, or any matter in this MOU, that Party shall notify the other Party and the Parties shall, acting in good faith, seek to resolve the issue by negotiations between themselves.
32. Failure to resolve any issue relating to the MOU or exchange of Data would be escalated to the Chief Executives of ORR and DVSA.

Review and amendment of this MOU

33. This MOU will commence upon dated signature by both Parties and will remain in force in accordance with clause 35.
34. The operation of this MOU will be reviewed at least every three years or sooner if a substantive need arises. Any substantive change to its terms will be subject to the agreement of the respective signatories. DVSA or ORR can exit this MOU at any point providing a minimum of one calendar month, and will inform the other organisation in writing if they choose to do so.
35. The arrangements for the provision of mutual advice and support described above shall be reviewed at working-level from time-to-time, and amended through the agreement of both parties, as appropriate and needed. This includes scrutiny of actual resources used against predicted allocation.

Signatures

Signed on behalf of DVSA by Gordon MacDonald, Head of Enforcement Policy.

A handwritten signature in black ink, appearing to read 'Gordon MacDonald', written on a light-colored background.

21 December 2020

Signed on behalf of ORR by John Larkinson, Chief Executive.

A handwritten signature in black ink, appearing to read 'John Larkinson', written on a light-colored background.

8 January 2021

Annex A: Definitions

In this MOU, unless the context otherwise requires the following provisions have the meanings given to them below:

“Controller”, “Processor”, “Processing”, “Data Subject”, “Personal Data”, “Special Categories of Personal Data” “Personal Data Breach” and “Data Protection Officer” have the meaning prescribed under Data Protection Legislation.

“Data” means data provided between ORR and DVSA as described in Annex B. The Data includes Personal Data and Special Categories of Personal Data as defined by Data Protection Legislation.

“Data Loss Event” any event that results, or may result, in unauthorised access to Personal Data held by either Party under this MOU, and/or actual or potential loss and/or destruction of Personal Data in breach of this MOU, including any Personal Data Breach.

“Data Protection Legislation”

- a. the UK General Data Protection Regulation 2020 (GDPR 2020).
- b. the Data Protection Act 2018 (DPA2018) to the extent that it relates to Processing of Personal Data and privacy.
- c. all applicable Law about the Processing of Personal Data and privacy.

“Data Subject Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

“Days” means calendar days, save where the context otherwise requires.

“Effective Date” means the date the MOU comes into effect upon dated signature by both Parties.

“MOU” means this written agreement between ORR and DVSA, including Annexes.

“Party” and **“Parties”** means one or more Parties to this MOU (as appropriate).

“Premises” means the location where the Data is to be supplied to, or accessed, stored or destroyed by either Party.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Sub-Processor” means any third party appointed to process Personal Data on behalf of the Processor related to this MOU.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

Annex B: Data protection

This annex describes the principles and procedures that ORR and DVSA will observe to ensure that Data sharing is conducted in an appropriate and compliant manner.

Purpose Limitation

1. Both Parties shall only share information if they consider that the purpose of sharing that Data is not incompatible with the purpose for which the Data was lawfully collected.
2. Both Parties shall use each item of the Data only for the Purpose for which it was provided and in accordance with its obligations under Data Protection Legislation.
3. The Data must not be used for any other purpose without the formal written approval of the relevant Party, subject to any relevant exemptions under Data Protection Legislation.

Data Security

4. Both Parties shall ensure the safe transmission of the Data in accordance with the security requirements of Data Protection Legislation and Her Majesty's Government Security Policy Framework.
5. Neither Party will under any circumstances supply any Data obtained from the other Party to any other parties, unless explicit written approval has been provided by the originator or unless required to do so by Law.

Description of the Data and Method of Transfer

6. DVSA will share Data with ORR for those Operators / Vehicles not compliant with the accessibility requirements:
 - a. Operator name
 - b. Vehicle Registration Numbers
7. ORR will share Data with DVSA on upcoming line outages where scheduled bus replacement service have been specified:
 - a. Train Operator
 - b. Date(s), time, locations
 - c. Details of timetable
8. In executing the transfer, both Parties will comply with the security arrangements described in (6) and (7).

Accountability

9. Both Parties shall comply with the requirements of the Data Protection Legislation and subordinate legislation made under it, or any legislation which may supersede it, together with any relevant guidance and/or codes of practice issued by the Information Commissioner.
10. Both Parties agree that the Data constitutes Personal Data as they relate to a living individual who can be identified from the Data.
11. Each Party understands that once it is in receipt of the Data from the other Party, it, separately, is a Controller for the Data. Each Party is responsible for complying with Data Protection Legislation in relation to its further Processing of the Data.
12. Both Parties shall ensure it has in place Protective Measures, which are appropriate to protect against a Data Loss Event.
13. If at any time either Party has any concerns that the other Party may have failed to comply with its obligations under Data Protection Legislation, they may report its concerns to the Information Commissioner's Office (or relevant Supervisory Authority), which has the power to investigate the Party's compliance with Data Protection Legislation (please note there is an escalation process at clause 32 and 33).
14. Where the Party considers there to be a breach of these conditions of use, the Party reserves the right to suspend the service until appropriate evidence is supplied to allay concerns.

Proportionality

15. Each Party is satisfied that the provision of their Data is adequate, relevant and limited to what is necessary in relation to the Purpose.
16. Each Party will keep under review their need to receive the range and volume of Data that it requires. The intention shall always be to use the minimum amount of Personal Data necessary to achieve the Purpose.

Accuracy of the Data

17. Each Party shall take all reasonable steps to ensure that the Data is accurate and up to date before it is transmitted, however, neither Party can warrant the accuracy of the Data provided.
18. Each Party does not accept any liability for any inaccurate information supplied to it by the licence holder or any other source beyond its control.

19. Neither Party shall be liable to the others employees, its servants, agents or principles for any claim loss or damage, however caused, through possible inaccuracies of Data supplied.

Retention of the Data

20. In accordance with Data Protection Legislation, each Party shall retain the Data in an identifiable form for a period that is no longer than necessary in the achievement of the Purpose.
21. Each Party shall arrange for the secure destruction or deletion of the Data, in accordance with the requirements of Data Protection Legislation as soon as it is no longer necessary to retain it.

Data Subject Requests

22. Each Party will answer any Data Subject Requests that it receives for the Data and for which it is the Controller.
23. The Party will instruct the Data Subject to contact the other Party where the Data Subject Request is pursuant to their activities as a Controller.

Restrictions on Disclosure of the Data

24. Each Party will answer any requests made under the Freedom of Information Act 2000 that it receives for information that it holds solely as a result of, or about, this MOU. In all cases where such a request is received, the Party shall:
 - consult the other Party before deciding whether or not to disclose the information;
 - allow the other Party a period of at least 5 Working Days to respond to that consultation;
 - not disclose any personal Data that would breach the principles of Data Protection Legislation; and
 - not disclose information that would prejudice either the security of the Data or the security arrangements of either Party.
25. Each Party shall respect the confidentiality of the Data and shall not disclose it to any third party without the prior written approval of the other Party, unless required to do so by Law.

Data Loss Event

26. Both Parties acknowledges that the other Party has a continuing interest in the security of the Data that it shares and in knowing about any Data Loss Event that may occur whilst the Data is being processed by the other Party.
27. The relevant Party will notify the other Party immediately of any Data Loss Event involving Data from the originating Party.

Each Party understands that as the relevant Controller it shall be responsible for notifying the incident to the Information Commissioner's Office and, where appropriate, Data Subjects, and to do so within the time limits required by Data Protection Legislation, and also for taking such action as is necessary to resolve the incident.