

RHA's PSVAR policy proposal

Executive Summary

- 1) The RHA is calling for the PSVAR regulations to be amended so that **coach** operators have a **legal duty to take reasonable steps to offer 100% accessible services**.
- 2) We believe this is a deliverable, proportionate and **sustainable** response that balances the legal requirement to provide accessible services for a person presenting a protected characteristic defined in the Equality Act 2010 with technically viable solutions.
- 3) The requirement to take reasonable steps to offer 100% accessible services should be phased in, with the legal duty on all in-scope operators applying in full five years after the conclusion of the formal PSVAR review specified in the UK Government's "Bus Back Better" strategy.

Rationale

- 4) The Companies Act 2006 requires a company director to exercise certain standard duties. Should the UK Government accept this proposal, the PSVAR regulations would be amended so that the "duty" principle established by the Companies Act 2006 is extended to include **service provision** that complies with the Equality Act 2010.
- 5) This would have the following impact:
 - a. it would require the director to ensure he/she takes reasonable steps to offer a 100% accessible service so that the spirit of the PSVAR regulations is met. This means that, even if the director does not **own** 100% accessible vehicles, it would be incumbent on him/her to have **access** to 100% accessible vehicles if reasonable service demands require it.
 - b. however, if no demand for a 100% accessible service exists, then there is no requirement for a director to either own or have access to 100% accessible vehicles.
- 6) The RHA believes that a potential barrier to this solution is allowed by the Equality Act 2010, as follows:
 - a. The potential barrier is that this solution is dependent on a person **making it known** that they have a "protected characteristic" under the Equality Act 2010 that would then trigger the coach director(s) to provide the 100% accessible service.
 - b. The act of **making it known** could however be seen as "indirect discrimination" and, hence, unlawful under the Equality Act. This is because the act of **making it known** is an action that an able-bodied person does not have to undertake, therefore putting a person with the "protected characteristic" at an unfair disadvantage.
- 7) However, the law does allow for legitimate discrimination. Specifically section 19, para 2(d) of the Equality Act 2010 says: *...a provision, criterion or practice is discriminatory in relation to a*

relevant protected characteristic of [Person] B's if...[Person] A cannot show it to be a proportionate means of achieving a legitimate aim.¹

In other words, the discrimination can be justified if the person [A] who's discriminating against person [B] can show it's a **proportionate means of achieving a legitimate aim.**²

- 8) According to the Citizens' Advice Bureau, a "legitimate aim" is the lawful reason behind the discrimination, and can include "running an efficient service".

Benefits

- 9) The RHA believes the following benefits are derived from this proposal:
- a. refocusing attention towards providing 100% accessible journeys, where there is a legal obligation to take account of customer needs, has the potential to deliver greater inclusivity in a much shorter timeframe;
 - b. it extends inclusivity to a wider range of services – we propose this should include all services to which the general public have access;
 - c. in turn, it could encourage a person with a "protected characteristic" to consider coach travel, safe in the knowledge that they will be accommodated without discrimination or differentiation;
 - d. all customers would receive equal treatment.

Road Haulage Association

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¹ See: <https://www.legislation.gov.uk/ukpga/2010/15/section/19>

² See: <https://www.citizensadvice.org.uk/law-and-courts/discrimination/what-are-the-different-types-of-discrimination/justifying-discrimination/#:~:text=The%20Equality%20Act%20says%20discrimination,if%20discrimination%20can%20be%20justified.>

Annex A – Definitions *(to be agreed with the Department for Transport)*

- A “**coach**” is a **licenced vehicle** providing a **flexible service** for a group containing 9 or more people.
- A “**licenced vehicle**” is a vehicle falling within the scope of the public service vehicle (PSV) regulations.
- A “**flexible service**” is a service provided to a **customer** for a **specified purpose** that is not explicitly provided for in relevant regulations.
- A “**customer**” is any member of the public or business.
- A “**specified purpose**” means, but is not limited to, the provision of a **coach** to transport 9 or more people to and/or from a:
 - o school
 - o tourist destination
 - o railway station (as part of an agreed “rail replacement” service)
 - o other destination as required by the **customer**
- “**Sustainable**” means providing a solution that balances social, environmental and economic needs.