



**Consultation on the scope
of regulation for some
categories of licence
holder for Complaints
Handling Procedures and
Disabled People's
Protection Policies**

October 2016

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Introduction

Summary and purpose of document

We are consulting on options for how we regulate obligations relating to Disabled People's Protections Policies (DPPPs) and Complaints Handling Procedures (CHPs) for the following categories of licence holder:

A. Station licence holders - In this category we include licence holders who hold only station licences. We are minded, subject to views of consultees, to keep this category in scope of regulation but to adopt a proportionate approach to approvals and monitoring.

B. Charter operators - In this category we include licence holders who run non-scheduled passenger services. We are minded, subject to views of consultees, to remove this category from the scope of regulation.

We are, therefore, inviting views on the following options:

1. To keep these categories within the full scope of regulation.
2. To remove the conditions relating to either or both of DPPPs and CHPs from the operating licences, where this is unlikely to impact on consumer protection.
3. To retain the conditions but to adopt a proportionate approach to the approval of DPPPs and CHPs and in the monitoring of continuing compliance. We invite comments on what a proportionate approach to approvals and monitoring might look like.

Background

1. Train and station licence holders are required, by their operating licence to have and comply with a Disabled People's Protections Policy (DPPP) and a Complaints Handling Procedure (CHP)¹. The DPPP and CHP must be approved by us - the Office of Rail and Road – (ORR). What we will look for when exercising our approval role and when monitoring for continuing compliance is set out in our published guidance²:

¹ Such licence conditions are also known as 'Statements of National Regulatory Provisions'

² CHP: http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf and DPPP: http://orr.gov.uk/_data/assets/pdf_file/0015/5604/how-to-write-your-dppp.pdf

2. We published Regulatory Statements in July 2014³ that stated that our overall policy objectives for these areas were to:

- Empower confident use of the railway by disabled passengers and promote awareness of the advice and help available.
- Promote continuous improvement in passengers' experience of rail through operators proactively acting on feedback and complaints.

3. DPPPs and CHPs that have been approved by us are published on our website⁴.

Our regulatory approach

4. Below we set out our proposals for the future regulation in the area of CHPs and DPPPs for each category of station operators and Metro Services and charter operators. The criteria against which we assess our policy proposals are:

- The nature of their interaction with the mainline network and whether the journey undertaken by the passenger is part of an end to end journey;
- The existence of law which provides protections to passengers in the area of complaints handling and disabled peoples' protections; and
- Whether they operate scheduled passenger services or otherwise demonstrate similar characteristics as heritage operators who are outside of the scope of regulation;

5. When exercising our functions under the Railways Act 1993 (RA93) and engaging with stakeholders, for example, when approving procedures and policies and when monitoring for compliance, we also apply the better regulation principles⁵. In particular we ensure that we are proportionate, consistent, transparent and targeted in our approach.

6. This means that we will also look for circumstances where regulation is not needed, for example where:

³ See http://orr.gov.uk/_data/assets/pdf_file/0009/13995/chp-regulatory-statement.pdf and http://orr.gov.uk/_data/assets/pdf_file/0010/13996/dppp-regulatory-statement.pdf.

⁴ CHPs are published here: <http://orr.gov.uk/what-and-how-we-regulate/licensing/licensing-railway-operators/licence-obligations/complaints-handling-procedures> and DPPPs are published here: <http://orr.gov.uk/what-and-how-we-regulate/licensing/licensing-railway-operators/licence-obligations/disabled-peoples-protection-policy>

⁵ Railways Act 1993 (RA93): Assignment of employees to particular parts of undertakings; <http://www.legislation.gov.uk/ukpga/1993/43/section/93>

- existing laws or industry self-regulation are sufficient to protect consumers and additional regulation would be superfluous, with the potential to give rise to confusion and/or additional cost;
 - consumers are able to exercise choice and, therefore, competition is likely to deliver the benefits of lower prices and higher quality products and services more effectively than regulation; or
 - the degree of potential consumer harm is so small that it is unlikely to satisfy our prioritisation criteria that have been designed to ensure that our limited resource is used efficiently and is targeted on cases that deliver the most value, for example, in terms of the number of consumers affected.
7. We are also mindful of the need not to impose higher costs on businesses than is necessary to protect the consumer. We will, therefore, adapt our processes and procedures to the scale of the business, where appropriate and, where we are confident that a different or 'lighter touch' approach is sufficient to achieve our objectives.
8. At the same time we recognise that rail users are paying a growing share of the cost of running and investing in the network and services and expect the industry to give them value for their money and to respond to their needs. It remains important, therefore, that we only withdraw from regulation where we consider there will be no significant drop in a customer focus from licensed operators in the absence of our scrutiny.

Scope of our consultation

9. We have identified different categories of licence holder whose operations are sufficiently different from those provided by train operators that run regular passenger services to merit further consideration as to the extent and scope of regulation of CHPs and DPPP. We address each of the categories of licence holder and our initial thoughts on our regulatory approach in the next chapter.
10. At high level the categories within scope of our consultation are:
- **Station licence holders.** In this category we include licence holders who only hold station licences, namely: Prestwick Airport; Ashford International; Southend Airport; Tyne and Wear Metro (TWM); and Pre-Metro Operations at Stourbridge.
 - **Charter Operators.** In this category we include licence holders who run non-scheduled passenger services, namely: Direct Rail Services (DBS); GB Railfreight (GBRfr); North Yorkshire Moors Railway (heritage); Rail Express Services (RES); Rail Operations Group (ROG); and West Coast Railway Company Limited (WCRC).

11. Consistent with our adherence to the better regulation principles, the following factors have been relevant to our consideration: if the consumer has choice in whether or not to use the service; interaction with the mainline network; whether the services operated under the licence are regular scheduled services as described in the national railway timetable; the footfall or number of passengers using the services; and the existence of laws that might otherwise protect the interest of the consumer.
12. We fully expect licence holders that are moved outside of the scope of regulation to continue to deliver good outcomes for passengers including those who need assistance to undertake journeys. We will review our position in the light of any stakeholder concerns identified during the course of the consultation.
13. Importantly:
 - It is not necessary that we treat each of these categories of licence holder in the same way, though any differentiation between our approach would have to be supported by objective criteria; and
 - There are distinct and different policy objectives for each of DPPPs and CHPs. This means we could choose to take a different approach to regulating outcomes in complaints handling from the approach which we take to protect the interests of disabled passengers.
14. Network Rail and London Underground are outside of the scope of this consultation. Both Network Rail and London Underground have significant interaction with passengers at their managed stations⁶ and, for this reason we consider it appropriate for both organisations to have policies and to monitor compliance with those policies.

Structure of the document

15. In Chapter 2 we explain what our existing approach to regulation looks like and options for change. In Chapter 3 we set out our proposals in respect of each category of licence holder identified at paragraph 8 above.
16. An initial impact assessment which focuses on Charter Operations where we are minded to change the scale and scope of regulation is attached at Annex A. We invite consultees to provide information, in particular monetised values of the impact of each of the options identified. We have not undertaken an impact assessment for the no change option that we are minded to adopt for station only operations.

⁶ The licence requirements apply to 14 stations on the LU network and 18 on the Network Rail network.

Process and next steps

17. We will consult for a period of 12 weeks and encourage licence holders and other interested parties to respond. We will consider the responses and subsequently publish our final view. We anticipate this will be in the first quarter of 2017. We will, of course, liaise closely with all affected licence holders.

How to respond to this consultation

18. The consultation period begins on 28 October 2016 and will run until 20 January 2017. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <http://orr.gov.uk/consultations/policy-consultations/open-consultations> or you can contact us on the details below if you need alternative formats (Braille, audio CD, etc.).

19. Please send your consultation responses to: <https://www.research.net/r/JMP5FPZ>

Competition and Consumer Policy

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20. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
21. A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.
22. All responses will be published on ORR website unless marked as confidential.

Freedom of Information

23. Information provided in response to this consultation, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

24. ORR will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

1. ORR's approach to the approval of, and monitoring for compliance with, DPPPs and CHPs

Summary

This chapter sets out ORR's role in approving CHPs and DPPPs, as well as our approach to monitoring compliance with these licence conditions. We also consider existing law and the costs of compliance.

Approval of policies and procedures

DPPPs

- 1.1 Train and station operators are required by their operating licences to establish and comply with a DPPP which must be approved by us. Through this approval role we ensure that licence holders' policies and practices protect the interests of older and disabled passengers. Our overall objective is to empower passengers to make confident journeys⁷.
- 1.2 A DPPP sets out, amongst other things, the arrangements and assistance that an operator will provide to protect the interests of disabled people using its services and to facilitate such use. The November 2009 guidance "*How to Write Your Disabled People's Protection Policy: A Guide for Train and Station Operators*" ('the DPPP guidance'⁸), explains that consistent with the licence obligation the policy should comprise two parts (1) a customer facing document entitled '*Making rail accessible: helping older and disabled passengers*'; and (2) a policy document entitled '*Making rail accessible: guide to policies and practices*'. These are collectively referred to within this document as the 'DPPP'.
- 1.3 The assistance offered by each operator may vary slightly. However the box below provides a summary of those areas that the guidance sets out should be included in the passenger facing DPPP, in order to achieve our approval.

■ **Passenger Assist.** Operators must participate in the Assisted Passenger Reservation System (APRS – or Passenger Assist) for disabled passengers whose journey begins at any of the stations at which that operator's trains are scheduled to stop. Passenger Assist is free and available to anyone who needs assistance due to a disability, temporary impairment, or older age.

⁷ ORR's policy approach – Regulatory statement, July 2014

⁸ The DPPP guidance is available here: http://orr.gov.uk/_data/assets/pdf_file/0015/5604/how-to-write-your-dppp.pdf. Note that responsibility for approving and monitoring DPPPs transferred to us from the Department for Transport in 2013.

- **Ramps.** Operators must provide ramps either at the station or on board the train to facilitate the boarding or leaving of the train by wheelchair users..
- **Alternative accessible service.** Operators must provide, without extra charge, an appropriate alternative accessible service to take disabled passengers to the nearest or most convenient accessible station from where they can continue their journey. This obligation applies where
 - the station is inaccessible (e.g. because of physical constraint);
 - substitute transport is provided to replace rail services (e.g. because of planned engineering works) that is inaccessible to disabled passengers; or
 - there is disruption to services at short notice that, for whatever reason, makes services inaccessible to disabled passengers.
- **Information.** Operators must provide up-to-date information about the accessibility of facilities and services at stations and on their trains on the National Rail Enquiries website, including the Station Journey Planner ('Stations Made Easy'), as well as their own website.
- **Contact.** Operators must provide contact details for passengers to provide feedback and/or to obtain a copy of the operator's DPPP.
- **Alternative formats.** Operators must be able to provide DPPPs in alternative format on request.
- **Aural and visual information.** Operators must provide, wherever possible, clear and consistent aural and visual information of train departures and other relevant messages, particularly in the event of delays or disruption.
- **Information points and displays.** Operators must provide information points at all larger stations⁹, which are open whenever the booking office is open.
- **Rolling stock information.** Operators are expected to provide an overview, in their DPPP, of the types of rolling stock used on their services, including information on the general accessibility of the each type and details of the routes on which different types of rolling stock are normally scheduled to run.
- **Tickets and fares.** Operators must ensure that, where disabled passengers are unable to buy a ticket at a station before their journey, they are able to buy a ticket without penalty on the train or at their destination. Operators must also ensure that Automatic Ticket machines have the facility to issue tickets at the reduced rate to holders of a Disabled Persons Railcard and to the holder's companion.

⁹ Larger stations are defined here as Network Rail category A, B and C stations.

- **Ticket gates.** Operators must ensure that automatic ticket gates or manual gates, where these are unstaffed, or staff are not in attendance, must be locked open.
- **Making connections.** Operators must provide details of their policy for assisting disabled people in making connections to other trains and in connecting to other services operating from the station, such as buses.
- **Disruption.** Operators must provide details of relevant policies and operational arrangements for meeting the needs of disabled passengers during disruption and must do everything possible to ensure that disabled passengers are able to continue their journey and are not left stranded.
- **Station entrances.** Operators must not permanently close station entrances if this will lead to a reduction in accessibility for disabled passengers to platforms or station facilities unless they have first consulted with the Department for Transport (DfT), Transport Focus (and London TravelWatch, where appropriate) and local access groups and the changes to access have been approved by the DfT.
- **Seats on trains.** Operators must make every reasonable effort to ensure that disabled passengers can obtain a seat on a train, particularly where these are not able to be reserved, and that wheelchair users are able to use wheelchair spaces.
- **Scooter carriage.** Operators must state their policy regarding the carriage of scooters for mobility-impaired people on their trains. Operators are expected to make the reasoning behind their policy clear in the DPPP, particularly with regard to any policy excluding the carriage of some or all mobility scooters.
- **Luggage.** Operators must ensure that staff will be available to help where this assistance has been arranged in advance (for example through Passenger Assist).
- **Left luggage.** Operators must ensure that left luggage facilities are suited to disabled passengers' needs e.g. in terms of the height of the lockers and locking mechanism that can be used by those with visual impairment and/or limited manual dexterity.

1.4 The DPPP guidance sets out that the policy document should include:

- details of the operator's accessibility strategy;
- how the operator makes the provision of services to disabled people an integral part of planning and delivering rail services;
- what mechanisms the operator has in place to monitor and evaluate its performance in delivering services and facilities to disabled passengers;
- a commitment to comply with the PRM TSI¹⁰ and the Department's Code of Practice¹¹ when installing or refurbishing rolling stock and facilities at stations;

¹⁰ Persons of Reduced Mobility Technical Specification for Interoperability.

¹¹ Design Standards for Accessible Railways, March 2015.

- a commitment to work with others with an interest in accessibility issues;
- a commitment on staff disability training;
- details of what assistance will be provided to disabled people at stations and on trains in the event of an emergency;
- details about how the operator plans their communications to consider the needs of disabled people, e.g. having a commitment that all telephone services for disabled people have text phones, such as minicom; and
- a commitment to ongoing monitoring of the use of designated disabled parking bays in station car parks, when the provision is not compliant with section D3 of *Accessible Train Station Design for Disabled People: A Code of Practice*.

1.5 The DPPP guidance also requires operators to review their policies every year and to submit the revised policies to us for approval.

CHPs

1.6 Train and station operators are required by their operating licences to establish and comply with a procedure for handling complaints relating to licensed activities from customers and potential customers. The licence holder's CHP is approved and monitored by ORR.

1.7 Our objective in this area is *"To promote continuous improvements in passengers' experience of rail, through licence holders acting on feedback through complaints"*¹²

1.8 In September 2015 we published new guidance on complaints handling procedures for licence holders (the CHP guidance)¹³. The CHP guidance sets out what we would expect to see in a CHP before issuing our approval. The box below provides a summary of the key elements of the CHP guidance.

1.9 In the CHP guidance we ask that licence holder's CHPs be constructed around three core standards. Each core standard is drafted at a sufficiently high level to enable licence holders to develop approaches that suit their own particular business models. They do, however, contain some best practice principles including those that derive from legal obligations, for example licence holders' responsibilities toward data protection.

1.10 The diagram below summarises what we would expect to see covered within a CHP under each core standard.

¹² ORR's policy approach – Regulatory statement, July 2014

¹³ See: http://orr.gov.uk/data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf



Figure 1: What we would expect to see under each core standard

Compliance monitoring

- 1.11 We ask licence holders to submit data for monitoring purposes (referred to otherwise as the 'core data indicators'). The current core data indicators are set out at Annex B to this document.
- 1.12 We use this data for the purposes of monitoring compliance with the licence conditions and to ensure that compliance is achieving good passenger outcomes. Monitoring could lead to more in depth investigation of the issue identified which could involve, or example, an exchange of letters with the licence holder concerned or could involve an independent audit of its practices and procedures.
- 1.13 The data is also used to present an overview of how the industry is performing across a whole range of passenger outcome indicators in ORR's *Measuring Up, Annual Rail Consumer Report*¹⁴ (the *Measuring Up Report*). The purpose of the *Measuring Up Report* is to increase transparency, highlight good practice and to identify areas for improvement.

¹⁴ See: http://orr.gov.uk/data/assets/pdf_file/0012/22116/measuring-up-annual-rail-consumer-report-june-2016.pdf

Compliance costs

1.14 Our initial thoughts on compliance costs for adjusting the scope and scale of regulation for Charter Operations (calculated by reference to having an approved policy in place and onward compliance) are set out in the impact assessment at Annex A. It is important to recognise that these costs are calculated purely on the basis of the additional costs arising from regulatory interaction rather than costs associated with complying with the law or delivering a good customer service. They do not, therefore, include:

- (With reference to DPPPs) the costs of reasonable adjustments to structures or staff time in providing assistance; or
- The costs of engaging with us during an investigation, we consider these costs to be entirely avoidable on the part of the licence holder.

1.15 In relation to DPPPs we do not include costs for being a party to Passenger Assist or for providing alternative accessible transport given that we have already made a policy decision for Charter Operators to be outside of the scope of this requirement.

1.16 Our initial thoughts on the compliance costs for submitting data and for engaging with us for the purposes of the Measuring Up Report are set out in the impact assessment. We seek views from consultees on these assumed costs (providing values and worked examples where possible); and

1.17 We ask consultees to provide views on any consumer detriment that might arise as a result of our proposals (providing values (for example, by way of numbers of consumers affected and the nature of that impact) where possible).

Existing law

1.18 In some areas what we ask licence holders to do is also covered to some extent within existing law. Broadly, we take two approaches to this.

- We identify where we would expect to see policies covering compliance with the law. For example, in our CHP guidance we say that we would expect the licence holder to have published policies in place to tell consumers how they will comply with data protection obligations. We make clear that the licence holder, however, has to obtain its own legal advice on whether that policy adheres to the law; or
- We provide more clarity or detail around how we would expect the licence holder to conduct itself within a regulated railway context. This is particularly important where the law permits a degree of latitude in compliance and where

we consider consistency in interpretation across the railways would be of benefit to consumers.

1.19 A summary of the relevant legislation is set out in the boxed text below.

- The Rail Vehicle Accessibility Regulations 2010 (RVAR) are the EU standards relating to the accessibility of the rail system for persons with disability or reduced mobility – which apply respectively depending on the nature of the rail system and when the rail vehicle was brought into use. This is monitored and enforced via ORR’s Health and Safety at Work Act 1974 powers.
- The PRM TSI requires that the operator must implement operational rules (as defined by Regulation (EC) No 1371/2007 of 23 October 2007 on rail passengers’ rights and obligations). This requirement is effectively met by the rail industry’s Passenger Assist arrangements in place on the national rail network.
- Articles 19 and 20(1) of EC Regulation number 1371/2007 on Rail Passengers’ Rights and Obligations (the PRO).
- The Equality Act 2010 requires operators to take reasonable steps to ensure that they do not discriminate against disabled people. The enforcement body for breaches of the Equality Act 2010 is the Equality and Human Rights Commission.

1.20 As noted above, there are various ways in which the different requirements may be fulfilled and it is incumbent upon the relevant operator to ensure its own operating practices meet these requirements. Broadly, the requirements are silent as to how the operator should give them practical effect.

2. ORR's proposals for certain categories of licensed operator

Summary

In this chapter we set out options for the regulation of CHPs and DPPP's for two categories of licence operator, namely Station Operators and Charter Operators. We propose a different approach for those Charter Operators who have more interaction with mainline operations than those Charter Operators who have a more limited interface.

At high level the options are:

1. To keep these categories within the full scope of regulation.
2. To remove the conditions relating to either or both of DPPP's and CHPs from the operating licences.
3. To retain the conditions but to adopt a proportionate approach to the approval of DPPP's and CHPs and in the monitoring of continuing compliance. We invite comments on what a proportionate approach to approvals and monitoring might look like.

We invite stakeholders to comment on our proposals around these options and to also consider the criteria against which we are assessing these categories and in particular whether there is an argument to assess operations by footfall either alone or in combination with the other factors that we identify.

Introduction

2.1 Below we set out our proposals for the future regulation in the area of CHPs and DPPP's for each category of station operators and Metro Services and charter operators. As we have stated, the criteria against which we assess our policy proposals are:

- The nature of their interaction with the mainline network and whether the journey undertaken by the passenger is part of an end to end journey;
- The existence of law which provides protections to passengers in the area of complaints handling and disabled peoples' protections;
- Whether they operate scheduled passenger services or otherwise demonstrate similar characteristics as heritage operators who are outside of the scope of regulation; and

- The better regulation principles, in particular we ensure that we are proportionate, consistent, transparent and targeted in our approach. .

2.2 We have regard to this in our assessment of our proposals. We ask consultees whether an alternative way to demonstrate proportionality would be to take footfall or number of passengers affected into account.

Station licence holders

2.3 In this category we are referring to licence holders who only hold station licences and are not bound into CHP or DPPP obligations by virtue of also holding passenger train licences. It refers, therefore, to **Prestwick Airport; Ashford International; Southend Airport; Tyne and Wear Metro (TWM); and Pre-Metro Operations at Stourbridge.**

2.4 Network Rail and London Underground are outside the scope of this consultation. Both Network Rail and London Underground (LU) have significant interaction with passengers at their managed stations¹⁵ and, for this reason we consider it appropriate for both organisations to have policies and to monitor compliance with those policies. Both operations also have significant interaction with the mainline network with their stations forming an integral part of the passenger end to end journey.

2.5 Each of Southend and Prestwick Airports and Ashford International comprises of one station accounting for a footfall (measured by way of total entries and exits for 2014/15¹⁶) of a rounded 520,000, 294,000 and 3.5m respectively.

2.6 TWM has a licence as a small amount of its network touches the mainline network due to the 2002 Pelaw to Sunderland and South Hylton extension, bringing 11 stations into our regulatory scrutiny. The part of the TWM network under scrutiny accounts for approximately 3.8 million passenger journeys annually.

2.7 In partnership with London Midland, pre-metro operations run the Stourbridge Shuttle which links Stourbridge town with the mainline at Stourbridge Junction. Regulatory scrutiny amounts to one station. The shuttle carries approximately 500,000 passengers per year.

¹⁵ The licence requirements apply to 14 stations on the LU network

¹⁶ See: <https://dataportal.orr.gov.uk/> . CHP data can be found here: <http://dataportal.orr.gov.uk/browse/reports/14>; DPPP data is here: <http://dataportal.orr.gov.uk/browse/reports/18>

2.8 Our proposed policy option is that all of these operations remain within full regulatory scrutiny for the following reasons:

- Each operation, at least to some extent, forms a component of a passenger's end to end journey. We see merit in ensuring a consistency of approach for the passenger for the entirety of that end to end journey by way of regulatory scrutiny; and
- We have not undertaken any market analysis of where protections should or should not exist (due to the disproportionate resource cost that this would involve).

2.9 This policy option will in practice mean that each operation:

- Will continue to have obligations around having an approved CHP and DPPP in place with the latter having to be reviewed and approved annually;
- Will be subject to our core data requirements – though this will need to be tailored and proportionate to the operations under consideration; and
- Will be engaging with us for the purpose of publishing performance under CHPs and DPPPs in our Measuring Up Report.

2.10 Due to the fact that these operations are confined to stations, however, we have agreed that the station licence holders do not need to be part of Passenger Assist. This is because Passenger Assistance is booked through train operators and, therefore, no station licence holders who are not also passenger train licence holders participate in it. We do, however, seek assurance that station licence holders subject to DPPP approval have protocols in place with relevant train operators to ensure that passengers who ask for it are provided with assistance at the station.

We are seeking views on:

- Whether the proposed criteria ORR has applied for considering the scope of regulation are appropriate;
- Whether there should be a further option to remove some of these operations from regulatory scrutiny entirely by virtue of footfall and if so what threshold value we should apply; and
- The need to adopt our proactive approach to on-going monitoring (the collection of core data and reporting annually by way of our Measuring Up Report) or whether we should adopt a more reactive stance which would mean us interacting with the undertaking only in response to complaints/intelligence about failures in service.

Charter operators

2.11 Operators who run non-scheduled passenger services (sometimes known as charter services)¹⁷ do not operate stations and generally use older rolling stock which in many cases may not be accessible. Seven operators fall into this category currently: **Direct Rail Services (DBS); GB Railfreight (GBRfr); North Yorkshire Moors Railway (heritage); Rail Express Services (RES); Rail Operations Group (ROG); and West Coast Railway Company Limited WCRC).**

2.12 Typically, the services provided by these operators are marketed and sold by booking agents or the company offering the tour which means they often have few touch-points with passengers. For this reason, RES already has a bespoke licence which does not include a complaints handling condition. Further, these operators do not participate in Passenger Assist and we have accepted this to date on the basis that information about travel assistance requirements can be acquired through the booking process which always, for these types of operations, takes place in advance of travel.

2.13 Our policy focus in respect of DPPPs for these operations has been to seek assurance as to how these operators interface with the station operators on the mainline to provide any assistance for passengers, including assistance for connections to other mainline services.

2.14 Our key policy options are to:

- 1. To keep these categories within the full scope of regulation.
- 2. To remove the conditions relating to either or both of DPPPs and CHPs from the operating licences.
- 3. To retain the conditions but to adopt a proportionate approach to the approval of DPPPs and CHPs and in the monitoring of continuing compliance similar to station operations that we discuss above.

2.15 The proposal on which we are now seeking views is to:

- Remove regulation for **RES; DRS; ROG; GBRfr; and North Yorkshire Moors Railway (heritage)** meaning taking CHP and DPPP obligations out of the licence.
- Retain regulation for **WCRC** but take a tailored and proportionate approach to the approval of policies and procedures and on-going monitoring.

¹⁷ As distinct from heritage operators who do not run on the national network are exempt from licensing requirements.

- 2.16 We have a number of reasons for removing regulation for the operations listed.
- 2.17 Firstly, the resource implication for both us and the parties involved is not inconsiderable (and is set out in the impact assessment attached and summarised in the previous chapter) and is not proportionate to the scale of the operations represented and, therefore, the potential for consumer harm particularly given the absence of any obvious market power.
- 2.18 Although not subject to direct regulation by us, the operations would nonetheless continue to have legal obligations under the Equality Act 2010 which provides protection for disabled passengers. Passengers will also continue to benefit from certain dispute resolution schemes set out under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.
- 2.19 There is precedent in that RES does not have a CHP obligation and we have no reason to suspect that this has led to a diminishment in consumer outcomes.
- 2.20 The operators listed do not offer regular timetabled services¹⁸ and as such have similar characteristics to heritage operations that are exempt from licence requirements entirely.
- 2.21 There is minimal, if any, interaction with the mainline network meaning the desirability of providing consistency of approach over the end to end journey does not apply here.
- 2.22 Our reasoning for retaining regulation for WCRC is set out below.
- 2.23 Firstly, their interaction with mainline services is potentially greater than those charter operations that offer one off journeys. WCRC, for example, operates seasonal scheduled services¹⁹.
- 2.24 In addition, at least some of the services on offer are intended to form part of an interconnecting or end to end journey for the passenger.
- 2.25 As an alternative to de-regulation now, we could:
- Adopt a tailored and proportionate approach to regulation, as is our intention with station operators and those charter operations that we intend to keep within scope (we invite views on this and what a tailored, proportionate approach might be); and/or
 - Retain oversight through regulation of operator's performance in the areas of complaints handling and disabled peoples' protections and take a view in 18

¹⁸ In fact they are prohibited from doing so by section 17 of their licence (unless with ORR's prior consent)

¹⁹ Though not in the national timetable

months in the light of further evidence gathered during that monitoring period. We invite views on this approach.

2.26 It would be our intention to apply this framework of reasoning to any future operations which would then determine whether we regulated complaints handling and disabled peoples' policies in respect of that licensed operator. It is important, therefore, when responding to this consultation to provide views on:

- Our proposals to remove or retain regulation for the operations listed; and
- Our reasoning, in particular the criteria we are adopting for determining whether an operation is in or out of scope.

2.27 We also invite stakeholders to provide views on our approach to CHPs and DPPPs separately. We acknowledge that the reasons for retention or otherwise for each of these entirely discrete areas are likely to be different. We remain open, therefore, and on the basis of stakeholder evidence, to varying our approach accordingly. We could decide to retain regulation in one area but de-regulate in the other. The values used in our impact assessment are, however, at certain points in the assessment, aggregated across both areas. Given the high degree of assumptions in the values used we continue to consider this to be a sensible approach. We will amend this, if necessary, in the light of stakeholder response and intelligence gained through the consultation.

We therefore invite stakeholders, within this context, to provide views on the following:

- Whether or not you agree with our proposals with respect to the operations listed, providing full reasoning;
- Which of options 1, 2, or 3 you would support – in the case of our approach to each of DPPPs and CHPs;
- Whether you agree with our categories of licensed operation;
- Whether you agree with the criteria we have applied on whether an operation falls in or out of scope, or whether there are any additional or alternative criteria we could adopt such as footfall²⁰ i.e. the number of consumers likely to be affected by our proposals;
- What is the predicted impact on passengers, including passengers who need assistance, of our proposals;
- Whether there are any gaps in passenger protection not covered by the legal provisions and where regulation might, therefore, be necessary;
- For those operations we propose to retain within scope of regulation, how and to what extent we should adopt a proactive approach to on-going monitoring (the collection of

²⁰ At present we have no access to the number of passengers who use these services

core data and reporting annually by way of our Measuring Up Report) or whether we should adopt a more reactive stance which would mean us interacting with the undertaking only in response to complaints/intelligence about failures in service;

- Whether a lighter touch approach to regulation (described variously above) could be an alternative approach to de-regulation;
- Whether there is merit in taking a decision on de-regulation at a later period (for example after 18 months of monitoring) when we would have more evidence of how these operators are performing in these areas, and, therefore, the extent to which regulation continues to be necessary; and
- The costs that we have assumed within our Impact Assessment at Annex A, providing alternative estimates of cost with full workings where applicable.

Annex A – Draft Impact Assessment

Introduction

1. The recommendation is that we explore the option to remove certain charter operations from regulation in respect of CHPs and DPPP's.
2. The objective of this exercise is to explore the need for continuing scrutiny of these operators given:
 - The internal resource implication of continuing to regulate these activities; and
 - The potential disproportionate burden on business given their relative size and the nature of their activities, namely:
 - the lack of any obvious monopoly power;
 - the absence generally of an end to end journey involving regular scheduled passenger services; and
 - the minimal interaction with the mainline network.
3. The alternative options explored within this initial impact assessment are:
 - a. To retain the status quo which will require these operators to:
 - i. Submit DPPP and CHP policies for our approval;
 - ii. Establish and submit a full set of core data for monitoring purposes;
 - iii. Be subject to scrutiny, compliance checks and possible enforcement action; and
 - iv. Be within scope of our Measuring Up report.
 - b. To adopt a lighter touch to monitoring and compliance which amounts to:
 - i. Requiring submission of a DPPP and CHP policy for our approval;
 - ii. Monitoring compliance reactively by way of complaints/issue – so no call for core data;
 - iii. Out of scope of our Measuring Up report.

- c. Remove operators from scope of regulation by removing these obligations from licence.
4. There are clearly variations within these broad options which will be explored by way of consultation and fleshed out within the final impact assessment.

Exploration of the options

Option A – the status quo

5. The **benefits** of staying with the status quo include:
 - a. Equality of treatment across all forms of operation, with no cause then for potential confusion as to the regulatory protections available to passengers travelling on a national network; and
 - b. Minimises the risk of potential consumer harm arising from unforeseen events or market failures not identified within our policy analysis.
6. The status quo gives rise to internal and external **costs**:

Internal

7. Internal costs for the status quo arise from (a) the approval of CHPs and DPPP; (b) the establishment of a core data set; (c) the analysis of core data and other indicators of performance; (d) narration of outturns in our Measuring Up report; (e) potential escalation and enforcement. Taking each in turn:
 - a. The approval of CHPs and DPPP. The approval of policies for parties who have relatively little contact otherwise with regulation takes a not inconsiderable resource relative to much larger entities. We estimate that this can be in the region of seven days of a FTE resource per policy. This amounts to an approximate first year staff cost of £1,933²¹ per policy decreasing to £1,353²² in each ensuing year assuming a learning by doing efficiency reduction of approximately 30%.
 - b. The establishment of core data. This has a first year set up cost plus any subsequent cost of changes to the requirements. Again given the relative regulatory immaturity of the firms involved and the need to tailor our approach to their size and scope of operations, we would expect this to amount to in the

²¹ Calculated from the average of current FTE equivalent salaries across bands A, C and E

²² Under our current policy the approval of DPPP is an annual exercise. This cost, therefore, only arises in respect of DPPP not CHPs

region of ten days per company to resolve. This could in monetary terms amount to in the region of:

- i. Approximately £2,933²³ for the first year per company; **plus**
 - ii. Approximately £879 for each subsequent year per company²⁴
- c. The analysis of core data and other indicators of performance – We estimate that this could take in the region of three days per year per undertaking amounting to an annual cost of approximately £879²⁵.
- d. Measuring up report – including these undertakings within scope of the measuring up report is likely to incur annual costs of determining how to present their outturns within the appropriate context and narrative and iterative discussions with the undertaking. We estimate this to be in the region of two FTEs days per year amounting to approximately £512²⁶ per undertaking.
- e. Escalation and enforcement costs: - these could be considerable amounting to potentially 40 days; potential external resource costs for auditing and research; plus ORR Board time. Total costs are difficult to predict but could be in excess of £10,460²⁷ plus research/audit costs of £25,000 per enforcement action.
8. We therefore estimate the total internal costs of Option A to be:
- a. In the region of £8,190 per company set up costs in the first year (assuming two policies per company); plus
 - b. In the region of £3,623 annual on-going costs²⁸; plus
 - c. Enforcement costs in the region of £10,460-£35,460 plus.

External costs

9. External costs derive mainly from the impact on the regulated business in scope. The costs arise from (a) the preparation of DPPP and CHP policies; (b) the establishment of systems and processes for the collection and submission of core data; (c) engagement with us on the Measuring Up Report and (d) on-going compliance costs. We do not include escalation or enforcement costs since we

²³ Calculated from the average of current FTE equivalent salaries across bands A, C and D

²⁴ Derived from an assumption of about three days per operation to help through each follow on year submission and potential changes to requirements.

²⁵ Calculated from the average of current FTE equivalent salaries across bands A C and D

²⁶ Calculated from the average of FTE equivalent salaries across bands C and D.

²⁷ Calculated from the average of FTE equivalent salaries across bands A C D and E. Excludes Board and senior staff time

²⁸ Assuming minimum activity on CHPs given the absence of an automatic review clause.

consider these to be entirely avoidable from the perspective of the undertaking.

Taking each of the others in turn.

- a. Submission of CHP and DPPP policies – we are not, pre-consultation, sighted on external staff costs but would estimate this to be at least equal to our own. We would also estimate the time for submission to be in the order of the time taken for us to assess the content. We, therefore, estimate the cost to the licence holder per policy to be in the region of £1,933 in the first year decreasing to £1,353 in each subsequent year²⁹.
- b. The submission of core data – We estimate submission costs for each licensed operator to be in line with our own so we estimate at a company level the costs to be:
 - i. In the region of £2,983 in the first year: **plus**
 - ii. An on-going annual submission cost of in the region of £879.
- c. The Measuring Up report – we estimate that our requirement for each licensed operator to check our populated templates should take in the region of less than 1 FTE per operator i.e. 30% of ORR resource associated with this activity. Using the same public sector pay bands and grade of resource we estimate the total annual cost per licensed operator to be in the region of £256.
- d. On-going compliance – one stakeholder estimated that in response to our consultation on CHP guidance that, at a minimum, it would cost a licence holder £5,000³⁰ to review its process in the light of our policy requirements. We believe that this is a reasonable starting point for assessing the annual costs likely to be incurred by the category of licensee within the scope of this consultation. This is likely to be either an underestimate (since we also require compliance with a DPPP) or an overestimate given the possible lower overheads incurred by smaller companies. For a starting point we believe a reasonable estimate of annual compliance costs to be in the region of, therefore, £5,000 per company.

10. We estimate the total external costs of Option A at a company level to be in the region of:

²⁹ These figures are highly indicative. They are calculated using typical public sector salary levels and our understanding of ORR staff time on particular issues.

³⁰ *ibid*

- a. £12,105 first year costs; plus
- b. £7,195 annual on-going compliance costs³¹.

Option B – light touch regulation

11. Light touch regulation would, under this Option, consist of (i) submission of CHPs and DPPPS; (ii) reactive monitoring by way of complaints; **but** (iii) no collection of core data or inclusion within the Measuring Up report.

12. Internal and external CHP and DPPP submission costs would be as set out above under Option A. In summary:

Internal

- a. Approximately £1,933 per policy for the first year **plus**
- b. Approximately £1,353 for annual approval of DPPPs for each ensuing year

External:

- a. Approximately £1,933 for the first year **plus**
- b. Approximately £1,353 for each ensuing year

13. Reactive monitoring costs are primarily absorbed within BAU, so although quantifiable by some measure, they are of a de minimis nature. The costs arising from reactive monitoring for internal and external parties relate primarily to the identification of ‘failure’ and subsequent escalation. Internal escalation costs have been set out in Option A as between £10,460 and £35,460 the latter figure including research/audit costs of £25,000. As above we consider external costs to be entirely avoidable.

14. Ongoing compliance costs. Within a framework of reactive monitoring there would be no internal costs to consider – as noted above this would be absorbed within BAU. We would expect there to be an external compliance cost equal to that of Option A i.e. in the region of £5,000 per licensed operator.

15. We, therefore, estimate the total internal costs of Option B per licensed operator to be in the region of:

- a. £3,866 set up costs in the first year; **plus**
- b. £1,353 annual on-going costs; **plus**
- c. Potential enforcement costs in the region of £10,460-£35,450 plus

16. We estimate the total external costs of Option B to be in the region of:

- a. £8,866 set up and compliance costs in the first year; **plus**
- b. £6,353 annual on-going costs.

³¹ See footnote 21 above

Option C – de-regulation

17. The costs of de-regulation arise from the process of removing this category of licensee from licence obligation via consultation and stakeholder engagement; and any potential future reputational risk.
18. We estimate the internal process cost to be in the region of 0.3 of an FTE for six months which amounts to approximately £1,987³² plus an external cost of engagement which we estimate to be in the order of 1day per licensed operator which based on our own internal staff costs would be in the region of £276 giving rise to a total cost of between £1,932 and £4,140³³ depending on the scope of the de-regulation.
19. The total cost of de-regulation is, therefore, likely to be in the region of between £3,919 -£6,127 plus the risk factors discussed below.

The risks of deregulation

20. Our view is that risk would arise for potential consumer harm arising from withdrawal from regulation. Our own complaints box demonstrates that although complaints do arise about these operations, the vast majority tend to focus on safety observations. An area that we do not intend to de-regulate as part of this policy consideration. Similarly although we are proposing to not regulate disabled policies, these undertakings remain subject to general disability law.

³² Calculated from the average of current FTE equivalent salaries across bands A, C and E.

³³ Calculated on the basis of between seven and 15 licensed operators.

Annex B – Core data indicators

| CHP Indicator | Regulatory obligation | Comments |
|---|---|--|
| Total number of complaints received | CHP Guidance - section 4.1, ORR's monitoring approach. | Data is collected on a periodic basis and published on the ORR Data Portal. ⁴⁴ |
| Percentage of complaints responded to within specified targets | CHP Guidance - section on response times, para 3.31 and 3.32. | Data is collected on a periodic basis and published on the ORR Data Portal. |
| Total number of complaints received by complaint category | CHP Guidance - section 4.1, ORR's monitoring approach. | Data is collected on a periodic basis and published on the ORR Data Portal. |
| Complaints about complaint handling process | CHP Guidance - section on quality assurance, para 3.62. | Data is collected on a periodic basis and published on the ORR Data Portal. |
| Customer satisfaction with the complaints handling process | CHP Guidance - section on quality assurance, para 3.62. | This data is collected via a passenger survey commissioned by ORR. The first data is due to be published in December 2016. |
| Satisfaction with complaint outcome | CHP Guidance - section on quality assurance, para 3.62 | This data is collected via the same survey noted above with the same publication date |

| CHP Indicator | Regulatory obligation | Comments |
|---|---|--|
| Frivolous and vexatious complaint volumes | CHP Guidance section on dealing with frivolous and vexatious complaints, paras 3.43 - 3.45. | We collected this data for the reporting year 2015-16 but have dropped this for 2016-17 because of the small number of cases train operators were reporting. |
| Continuous improvement in complaint handling | CHP Guidance - paras 1.7 and 1.8 regarding continuous improvement. Requires evidence of a good complaints handling procedure that leads to continuous improvement, so that in the medium term the root causes of complaints are addressed and systemic solutions are put in place. | This data is collected on a one-off annual basis by us and reported in this report. |
| Complaint appeals | CHP Guidance - para 3.41, 'passenger should be signposted to TF or LTW and ADR after they have received the second substantive response from the licence holder, even if the licence holder continues to engage with the complainant with the objective of resolving the complaint itself.' | This data started being collected by licensees from 1 st April 2016 and will be published on the ORR Data Portal. |

| DPPP Indicator | Regulatory obligation | Comments |
|---|--|---|
| Disabled Person Railcard journey data | Ensures train operators are fulfilling their obligations to DPRC card holders as per DPPP Guidance (e.g. Section C). | We retrieve this data from the LENNON database and publishes it on the Data Portal. |
| Staff who have received relevant disability awareness training or disability equality training | DPPP Guidance - Para. D6 on staff training. | This data is collected on a one-off annual basis by us and reported in this report. |
| Assisted journeys | DPPP Guidance - Para. C2 'assistance for passengers' | We have been receiving data on the number of requests (bookings) made for assisted travel received by each train operator within each rail period since September 2015 via ATOC. We now publish this information on our Data Portal. We are continuing to engage with industry (and its representatives) to make improvements to the quantity and quality of monitoring in this area e.g. to provide data on the number of pre-booked assistances completed and; the volume of turn-up-and-go assistance provided by each train operator. |

| DPPP Indicator | Regulatory obligation | Comments |
|--|--|--|
| Number of complaints where there was a service problem relating to a passenger's disability | CHP Guidance – Section 4.1, ORR's monitoring approach. | Data is collected on a periodic basis and published on the ORR Data Portal. |
| Passenger Assist satisfaction data | DPPP Guidance - Para. D3 'monitoring and evaluation of performance in delivering services and facilities to disabled passengers. | Data unavailable at this time. We are currently engaged in discussion with ATOC about how best to gather this information. |
| Alternative accessible transport | DPPP Guidance - Para. C3 requirements around the provision of Alternative Accessible Transport. | This data is collected on a one-off annual basis by us and reported in this report. |

Annex C – List of organisations consulted

- Action on Hearing Loss
- Age UK
- Alzheimer’s Society
- Arriva Trains Wales
- Ashford International
- ATOC – Association of Train Operating Companies
- C2c Rail Limited
- Campaign for Better Transport
- Chiltern Railways
- Citizens Advice
- Deafblind UK
- Department for Transport
- Direct Rail Services
- Disabled Go
- Disabled Persons Transport Advisory Committee
- Disability Action Alliance
- Disability Rights
- East Midlands Trains
- Eurostar
- First Hull Trains
- First Transpenine Express
- GB Rail Freight
- Grand Central Railways

- Great Western Railway
- Greater Anglia Railways
- Govia Thameslink Railway
- Guide Dogs
- Heathrow Express
- Leonard Cheshire
- London Midland
- London Overground
- London Travelwatch
- London Underground
- Mencap
- Merseyrail
- MTR Crossrail
- National Autistic Society
- National Pensioners Convention
- Network Rail
- North Yorkshire Moors Railway
- Northern Rail
- Pre-Metro Operations at Stourbridge
- Prestwick Airport
- RailFuture
- Rail Express Services
- Rail Operations Group
- RLSB – Royal London Society for Blind People

- RNIB – Royal National Institute of Blind People
- Scope
- ScotRail
- South West Trains
- Southeastern
- Southend Airport
- Stobart Rail
- Stroke Association
- Transport for All
- Transport Focus
- Transport for the North
- Transport Scotland
- Transport for Wales
- Tyne and Wear Metro
- Vision 2020
- Virgin Trains
- Virgin Trains East Coast
- Visit Britain
- West Coast Railway Company Limited
- Which?



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