

Our response to “Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport”

Consultation details

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A. Introduction

About the Commission

1. The Equality and Human Rights Commission (the **Commission**) is the National Equality Body for England, Scotland and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
2. We are an “A Status” National Human Rights Institution in recognition of our independence, powers and performance, and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission.

Our work in this area

3. Earlier this year, the Commission launched its new [Strategic Plan](#), covering the period 2019 to 2022. In this plan, we identified six priority aims, referring to our evidence base in our [‘Is Britain Fairer?’](#) suite of reports, which includes [‘Is Scotland Fairer?’](#), [‘Is Wales Fairer?’](#), and [‘Is England Fairer?’](#) research reports, and through extensive consultation with stakeholders. Our priority aim two is that *“public transport better supports the economic and social inclusion of disabled and older people.”* As our Strategic Plan explained:

When public transport is accessible and appropriate, it allows people to participate fully in all aspects of life – going to work, accessing education or health services and visiting family and friends. However, efforts in this area, particularly to improve public transport for disabled people, are inconsistent.¹

¹ [Equality and Human Rights Commission, ‘Strategic Plan 2019 to 2022’ p 23.](#)

4. Specifically, our work over the course of our current Strategic Plan is to ensure that equality considerations are central to public transport service design. For example, we have engaged with the Williams Rail Review, and recently launched a [legal support project](#) to provide legal assistance to individuals who have experienced discrimination in accessing transport services.
5. In light of this, we welcome the opportunity to respond to this consultation, which gives the Commission an opportunity to engage with the design and regulation of a new form of transport from the outset.

The relevant human rights and equality frameworks in relation to transport

The Equality Act 2010 (the EA 2010)

1. Firstly, it is important to point out that the EA 2010:
 - ... does not expect disabled people to be treated in exactly the same way as those who are not disabled. The reason for that is formal equality, comparing a disabled person with others, would not result in genuinely equal treatment or equality of outcomes.²
2. Rather, the EA 2010 recognises that disabled people have particular needs that often require them to be treated differently from non-disabled people in order to provide equality of opportunity.
3. The Law Commissions have already set out the applicable sections of the EA 2010 and their effect in the Consultation Paper, and we do not propose to repeat that analysis here.³ In summary, it is important to understand that the general

² B Hepple, *Equality: The New Legal Framework* (2011) p 72.

³ [Law Commission of England and Wales CP No 245; Scottish Law Commission DP No 169, 'Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport' paras 6.22 to 6.24.](#)

term ‘disability discrimination’ (a form of “prohibited conduct” under the EA 2010) can refer to one or more of:

- a. Direct discrimination (where a person treats another less favourably than they treat or would treat others because of disability);⁴
- b. Indirect discrimination (when a person applies an apparently neutral provision, criterion or practice which puts disabled persons at a particular disadvantage without being able to justify it as a proportionate means of achieving a legitimate aim);⁵
- c. Discrimination arising from disability (where a disabled person has been treated unfavourably because of something arising in consequence of their disability unless the person did not know, and could not reasonably be expected to know, that the person has the disability);⁶ and
- d. A failure to make reasonable adjustments (a positive duty that requires certain persons to whom it applies to take steps to ensure that disabled people can access services).⁷

4. The latter two forms of prohibited conduct are unique to the protected characteristic of disability.

5. In addition, the EA 2010 sets out two other forms of “prohibited conduct”:

- a. Harassment (when a person engages in unwanted conduct which is related to a relevant protected characteristic (such as disability) and which has the purpose or the effect of violating the person’s dignity or creating an intimidating, degrading, humiliating or offensive environment for that person); and
- b. Victimisation (where a person suffers a detriment because they complain about discrimination they have suffered or help someone who has been

⁴ [Equality Act 2010, s 13](#). Note that direct discrimination is lawful in relation to the protected characteristic of disability, where a disabled person is treated *more* favourably than a non-disabled person.

⁵ [Equality Act 2010, s 19](#).

⁶ [Equality Act 2010, s 15](#).

⁷ [Equality Act 2010, s 20](#).

the victim of discrimination by, for example, giving information or evidence).

6. To add to the Law Commissions' analysis, we emphasise regarding the duty to make reasonable adjustments that:

The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large.⁸

7. The duty is, however, only to make such adjustments as are “reasonable”, and the Commission has provided guidance on the interpretation of this concept.⁹
8. In addition, section 149 of the Equality Act 2010 requires public authorities and those exercising a public function to comply with a general duty, which is then supported by specific duties which are different in each of the three GB nations.¹⁰ The “general equality duty” is the overarching requirement, or substance of the duty, and the “specific duties” are intended to help performance of the general equality duty. Taken together these duties are often referred to as the “Public Sector Equality Duty” (PSED).¹¹
9. The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

⁸ [Equality and Human Rights Commission, 'Equality Act 2010 Code of Practice, Services, public functions and associations. Statutory Code of Practice' para 7.4.](#)

⁹ [Equality and Human Rights Commission, 'Equality Act 2010 Code of Practice, Services, public functions and associations. Statutory Code of Practice' para 7.30.](#)

¹⁰ [Equality Act 2010, s 149.](#)

¹¹ For more information and guidance on the Public Sector Equality Duty see: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>; <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities>; and <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-wales>

- a. Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- b. Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- c. Foster good relations between people who share a relevant protected characteristic and those who do not share it.

10. As the Law Commissions note, the PSED currently applies to Local Transport Authorities and Transport Partnerships. We would emphasise that it also applies to other public bodies including *regulators* of public transport, such as the Office of Rail and Road.

11. The PSED will apply to any organisation when exercising a public function (such as the licensing or regulation of Highly Automated Road Passenger Services (**HARPS**)),¹² even if it may not generally apply to the private sector operator itself.

12. The Commission believes that the PSED is an essential tool in embedding equality considerations in the exercise of public functions. It does so by requiring organisations to consider how they could positively contribute to the advancement of equality in the design and implementation of their policies. For example, a regulator with responsibility for HARPS would need to consider the potential impact on equality before it designs any new regulatory framework or guidance. It should then collect data on the actual impact on equality of its regulatory activity, and consider redesigning aspects of it in light of the evidence.

13. It is also important to note that the socio-economic duty under Part 1 of the EA 2010 – known in Scotland as the “Fairer Scotland” duty – came into force in

¹² Throughout this consultation response we have adopted the Law Commissions’ use and definition of the acronym “HARPS.” The Law Commissions’ defined the term as “a service which uses self-driving vehicles to provide journeys to passengers without a human driver or user-in-charge. The vehicle would be able to travel empty or with only passengers on board.” ([Law Commission of England and Wales CP No 245; Scottish Law Commission DP No 169, ‘Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport’ p i](#)).

Scotland in April 2018.¹³ It places a legal responsibility on particular public bodies – including the Scottish Government, Scottish local authorities, and Transport Scotland – to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. The Welsh Government has committed to bringing the socio-economic duty into force in Wales in April 2020.

The international human rights framework

14. The international human rights framework is a body of legal standards developed and agreed to by states at the international level. Most notably it comprises UN human rights treaties, which are binding in international law upon states that have signed and ratified the treaty. This means that all UK governments and public bodies – central, local and devolved – and all public officials have to take appropriate measures to implement them.¹⁴
15. There are a number of provisions within international treaties which either relate to, or can be applied to, the topic of transport. These are, in particular, Articles 9 and 19 of the UN Convention on the Rights of Persons with Disabilities (the **UNCRPD**). The UK ratified the UNCRPD in 2009.
16. The Committee of the Rights of Persons with Disabilities (the **CRPD Committee**) is the treaty body of independent experts which monitors the implementation of the UNCRPD.

¹³ <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/>

¹⁴ We accept, however, that under UK law, international law does not form part of domestic law unless and until it has been expressly incorporated with parliamentary authority. This means that, strictly speaking, unincorporated international human rights treaties are not 'justiciable': in other words, breach of their provisions cannot be enforced through our courts. However, the treaties are often, and increasingly, influential in shaping how the courts interpret rights enshrined in domestic laws, and are increasingly referred to in court judgments (in relation to the UNCRPD see, for example, *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 and *P and Q c Surrey County Council* [2014] UKSC 19).

17. At the outset, it is important to understand that under both section 20 of the EA 2010 (requirement to make reasonable adjustments, explained above), and the UNCRPD, obligations around accessibility are *anticipatory*: that means the state and its agents need to take proactive steps to provide accessible services rather than wait for requests or complaints from disabled people.¹⁵

Article 9 of the UNCRPD – accessibility

18. Some of the most explicit international human rights standards in relation to transport are found in Article 9 of the UNCRPD on accessibility.¹⁶ It requires States Parties to “take appropriate measures to ensure” disabled people have equal access to “the physical environment, to transportation, to information and communications ... and to other facilities and services open or provided to the public both in urban and rural areas”.¹⁷

19. The CRPD Committee has set out its authoritative interpretation of Article 9 in its General Comment No. 2.¹⁸ General Comments are not strictly legally binding, but carry considerable authority and persuasive force.

20. Importantly, the Comment notes that accessibility is a precondition for independent living and the full inclusion and participation of disabled people, and to enable them to enjoy all other human rights, including rights to work, rights to education, and rights to leisure and recreation.¹⁹

Article 19 of the UNCRPD - living independently and being included in the community

¹⁵ [Equality and Human Rights Commission, ‘Equality Act 2010 Code of Practice, Services, public functions and associations. Statutory Code of Practice’ para 7.30; UNCRPD General Comment No. 2 on Accessibility \(2014\) para 25.](#)

¹⁶ [UNCRPD, Article 9 – Accessibility.](#)

¹⁷ [UNCRPD, Article 9 – Accessibility.](#)

¹⁸ [UNCRPD, General Comment No. 2 on Accessibility \(2014\) para 25.](#)

¹⁹ [UNCRPD, General Comment No. 2 on Accessibility \(2014\) para 1.](#)

21. Article 19 of the UNCRPD says that States “shall take effective and appropriate measures to facilitate full enjoyment of this right by persons with disabilities”, and that this includes ensuring that “community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”²⁰
22. Although Article 19 of the UNCRPD does not explicitly refer to transport, it is clearly of central importance to achieving this right – hence the CRPD Committee has made it clear that access to transport is a key part of ensuring that disabled people have choice and control over all aspects of their lives in order to enable independent living, and for full and effective inclusion and participation in all areas of life on an equal basis with others.²¹
23. We urge the Law Commissions’ to ensure that their final recommendations in their Report enable the UK Government to be in a position to be fully compliant with its international law obligations.²² The Commission has developed a six point plan for the incorporation of these rights into domestic law.²³
24. We were disappointed, therefore, to see no reference to the UNCRPD in the Consultation Paper. We hope that our response highlights the importance and relevance of the UNCRPD to some of the issues being considered, and we are happy to engage with the Law Commissions going forward on this issue.

B. Responses to specific questions

²⁰ [UNCRPD, Article 19 – Living independently and being included in the community.](#)

²¹ [UNCRPD, General Comment No 5 on Living Independently and Being Included in the Community, \(2017\) paras 16 and 32.](#)

²² We note that, in previous consultation papers, the Law Commissions have acknowledged the importance of recommending reforms in compliance with the UK Government’s international law obligations, regardless of whether Parliament has incorporated the international law into domestic law – see, for example, [Law Commission of England and Wales CP No 244](#); [Scottish Law Commission DP No 167, ‘Building families through surrogacy: a new law’ para 4.4.](#)

²³ Equality and Human Rights Commission, ‘[Supplementary written evidence from The Equality and Human Rights Commission](#)’ (2018) [\(YDA0045\)](#).

25. In light of our status set out above, we are only responding to questions in the Consultation Paper which are relevant to our functions as the national equality body for Great Britain, and one of its National Human Rights Institutions.

Consultation Question 1

Do you agree that Highly Automated Road Passenger Services (HARPS) should be subject to a single national system of operator licensing?

26. **We agree**, subject to our view that a single UK-wide regulator would need to align with, and respect, the devolution of transport powers to the Scottish Parliament and Welsh Assembly (for example, later down the line through a legislative consent motion). It may be that the three nations of Great Britain wish to create their own national regulators, and so we refer to the possibility of “regulator(s)” throughout this consultation response. We believe, however, that any regulators across the three nations must, at a minimum, be required to work together to produce common minimum standards, given issues around cross-border movement of vehicles, for example.

27. It is clear that one of the current problems in reducing the barriers that disabled people face when using transport is the disjointed and complicated regulatory framework. As Scope have written:

Currently, the public transport system is made up of a myriad of operators, regulators, watchdogs and passenger groups, and there is often little clarity on which body is responsible for individual issues when things do go wrong. Even within the same mode of transport the picture can be complicated.²⁴

28. The regulation of taxis and private hire vehicles is particularly illustrative of this problem. As the Local Government Association (the membership body for local authorities in England and Wales) has written in its guidance to councillors on taxi and private hire vehicle licensing, the current regime, over time:

²⁴ [Scope, ‘Travel Fair’ \(September 2019\)](#).

...has created differing standards with little coordination within regions or nationally. The result is varying standards of service for passengers, particularly disabled users; confusion for taxi and PHV [private hire vehicle] businesses; some types of vehicles operating unregulated; and taxis working in areas in which they are not licensed to do so. This is far from ideal.²⁵

29. The Commission believes that spontaneous travel is fundamental to the right to disabled people in realising their right to independent living, as guaranteed by Article 19 of the UNCRPD.²⁶ As a result of the current local licencing model for taxis and private hire vehicles, disabled people cannot be guaranteed that minimum accessibility standards (both in terms of vehicles and driver training) will apply at a national level, depriving them of this right in practice.

30. We believe that a single system of national operating licences for HARPS, administered by a national regulator(s) has the potential to avoid this problem for highly automated road-based vehicles. For example, uniform licence conditions at a national level would ensure that passengers of these vehicles know what to expect wherever they travel.

31. A national, licensing scheme also has the potential to simplify and speed up complaints and enforcement, a key issue to which we return to in our response to Consultation Question 27, below.

Consultation Question 7

Do you agree that applicants for a HARPS operator licence should show that they:

1. are of good repute;
2. have appropriate financial standing;

²⁵ [Local Government Association, 'Taxi and PHV licensing' \(August 2017\) p 7.](#)

²⁶ [See UNCRPD, General Comment No 5 on Living Independently and Being Included in the Community, \(2017\) para 37.](#)

3. have suitable premises, including a stable establishment in Great Britain; and
4. have a suitable transport manager to oversee operations?

32. As they note, the Law Commissions have derived these licence conditions from the current standard passenger service vehicle operator licences.²⁷

33. We agree that applicants should demonstrate these credentials as minimum, but think that there is scope for the Law Commissions to be more ambitious in terms of using licence conditions to secure accessibility for disabled people.

34. As the Law Commission of England and Wales noted in its 2014 Report into Taxis and Private Hire Services:

As the law currently stands, much of the behaviour complained of [in relation to discrimination when using taxis and private hire vehicle] by disabled passengers would infringe the provisions of the Equality Act 2010, in particular the requirement not to discriminate in the provision of services. However, the only means of enforcing this is through pursuing an action in the civil courts. This is costly, complex and, without the support of a representative organisation or charity, not feasible for most individuals. Furthermore, even if action were to be taken against a driver or dispatcher, the court would not have the power to take action against the licence.²⁸

35. As a result, the Law Commission of England and Wales concluded that:

In order to provide a more effective means of enforcement, and one which targets the offending behaviour more squarely, we strongly recommend that the Secretary of State should exercise the standard-setting powers to make it a condition of licence for both drivers and operators that they comply with the

²⁷ [Public Passenger Vehicles Act 1981, s 14ZA.](#)

²⁸ [Law Commission of England and Wales No 347, 'Taxi and Private Hire Services' para 12.42.](#)

provisions of the Equality Act 2010, specifically section 29, which prohibits discrimination in the provision of a service.²⁹

36. This recommendation was later endorsed by the House of Lords Equality Act 2010 and Disability Committee.³⁰

37. We were surprised, therefore, not to see a similar discussion in the current consultation. We would argue that there is both scope, and a pressing need, to use licence conditions more effectively – being of “good repute” is not particularly onerous and does not provide sufficient incentive for operators to import mainstream accessibility and inclusivity into their operating models.

38. We would argue that the licence conditions for HARPS operators should be extended to cover, at a minimum, compliance with the EA 2010. Other licence conditions could also include mandatory staff disability awareness and assistance training (to the extent that on-board or station staff are still involved in the journey or, alternatively, for staff involved in remote supervision).

39. We also think that consideration should be given as to whether compliance with any new national minimum accessibility standards, that we recommend the creation of below, is also made a licence condition. This will depend on the ultimate powers of the new regulator(s) – it may be, for example, that they are given a free-standing power to enforce compliance with the accessibility standards, in which case a power to enforce them via licence conditions may be considered superfluous.

Consultation Question 11

Do you agree that HARPS operators should have a legal duty to:

1. Insure vehicles;

²⁹ [Law Commission of England and Wales No 347, 'Taxi and Private Hire Services' para 12.43.](#)

³⁰ [House of Lords Select Committee on the Equality Act and disability, 'The Equality Act 2010: the impact on disabled People' \(Report of Session 2015-16\) para 480.](#)

2. *Supervise vehicles;*
3. *Report accidents; and*
4. *Take reasonable steps to safeguard passengers from assault, abuse or harassment?*

40. Our response below addresses only the suggestions that HARPS operators should have a legal duty to report accidents, and to take reasonable steps to safeguard passengers from assaults, abuse or harassment. We express no views on the other elements of this Consultation Question.

A legal duty to report accidents

41. **We support this proposal.** But we also recommend that, should a legal duty on HARPS operators to report accidents be created, details of any known protected characteristics of those involved in the incidents should also be reported. Such data could be collated in the same way as equality and diversity monitoring data is currently recorded by employers, for example, to ensure confidentiality.

42. As the Law Commissions will be aware, there are considerable concerns about the impact of artificial intelligence and machine learning on the protections guaranteed by the EA 2010. For example, the Committee on Standards in Public Life is undertaking a review to understand whether the existing framework and regulations are sufficient to ensure that high standards of conduct are upheld as AI use expands across the public sector.³¹

43. The Law Commissions discussed the issue of avoiding bias in the behaviour of automated driving systems in their first Consultation Paper.³² It noted that:

³¹ <https://www.gov.uk/government/collections/ai-and-public-standards>

³² [Law Commission of England and Wales CP No 240; Scottish Law Commission DP No 166, 'Automated Vehicles, a joint preliminary consultation paper' para 9.68 onwards.](#)

There are particular concerns if decisions adversely affect a group of people on the basis of race, gender or other protected characteristics.³³

44. To refer to one further example that was published after the Law Commissions' first consultation paper, recent research has shown that machine 'vision' was consistently better at identifying pedestrians with lighter skin tones than darker.³⁴ This raises obvious concerns about how HARPS safely navigate through crowds.

45. Particular issues may be raised by the combination of HARPS and 'shared spaces.' Although there is no universal definition of 'shared space,' the aspect we are most concerned about in relation to disabled and older people and HARPS vehicles is what the Women and Equalities Committee referred to as:

The removal of traditional delineators between pedestrians and vehicles (such as kerbs and controlled crossing points) and the mixing of pedestrians and vehicles in the same street space.³⁵

46. In 2017, the Future of Life conference formulated the 23 'Asilomar AI Principles', to ensure that AI continues to be a force for good. Of these principles, the most relevant for the present discussion is "failure transparency" which is defined as "if an AI system causes harm, it should be possible to ascertain why."³⁶ A road traffic accident involving a HARPS vehicle is perhaps the most obvious example of a failure in AI for which, we would argue, the fullest possible information needs to be gathered and analysed.

47. Given the acknowledged risks of in-building bias and discrimination into AI, in order for the operators and any regulator(s) to fully ascertain why such an accident occurred, we consider that recording the details of any known protected

³³ [Law Commission of England and Wales CP No 240; Scottish Law Commission DP No 166, 'Automated Vehicles, a joint preliminary consultation paper' para 9.69.](#)

³⁴ [B White, J Hoffman and J Morgenstern, 'Predictive Inequity in Object Detection' \(21 Feb 2019\).](#)

³⁵ [Women and Equalities Committee, 'Building for Equality: Disability and the Built Environment' \(2017\) para 159.](#)

³⁶ <https://futureoflife.org/ai-principles/>

characteristics of those involved in the incidents should also be recorded and reported. This commitment to failure transparency would not be an onerous additional burden on operators, and would help spot emerging problems in the coding and implementation of HARPS.

A legal duty to take reasonable steps to safeguard passengers from assault, abuse or harassment

48. In 2011, the Commission published an inquiry into disability-related harassment. Our research found that disabled men and women were more likely than non-disabled people to report being “very” or “fairly” worried about being physically attacked by strangers; insulted or pestered; and being the victim of crime.³⁷

49. The Commission’s inquiry reported that:

On and around public transport, including stations, stops, ticket offices and waiting areas were settings for harassment incidents cited in almost every focus group and interview. These affected respondents’ lives not only because of the intrinsic features of the incidents themselves but also because many disabled people rely on public transport. Respondents mentioned being stared or laughed at, avoided and commented on by other passengers. They also talked about other passengers showing impatience or annoyance, for example if they were slow or took up a lot of space with aids such as assistance dogs, sticks, frames and wheelchairs.³⁸

50. Since the publication of our inquiry, research from Scope found that one in four disabled people said that in the last year they have been prevented from using public transport by other people’s attitudes.³⁹ In 2019, further research found that

³⁷ [Equality and Human Rights Commission, ‘Hidden in plain sight. Inquiry into disability-related harassment’ \(2011\) pp 77 to 78.](#)

³⁸ [Equality and Human Rights Commission, ‘Hidden in plain sight. Inquiry into disability-related harassment’ \(2011\) pp 83 to 84.](#)

³⁹ [Scope, ‘Independent. Confident. Connected’ \(2018\) p 20.](#)

80% of disabled people have felt anxious about using public transport, with almost half experiencing negative attitudes including nasty looks and comments.⁴⁰

51. From these findings, Scope rightly concluded that:

... an inclusive transport system does not mean one that is physically accessible – it needs to be one that disabled people feel comfortable and confident in using.⁴¹

52. Although our response is focussed on the impact on disabled persons, the fear of violence, harassment or abuse acting as a barrier to using public transport extends across other protected characteristics – and, of course, disabled people may also share other protected characteristics such as being from an ethnic minority, female, and/or lesbian, gay, bisexual or transgender. Transport for London commissioned research in 2019 which showed that:

- a. BAME (Black, Asian and Minority Ethnic) Londoners are significantly more likely than White Londoners to have experienced hate crime targeted at themselves or witnesses it in the past year (27% compared with 19%);⁴²
- b. Women are significantly more likely than men to have experienced unwanted sexual behaviour whilst using public transport in London in the past year (14% compared with 6%);⁴³
- c. Women are significantly more likely to have experienced or witnessed verbal assaults than men in the past year (76% compared with 64%); and⁴⁴
- d. LGB (Lesbian, Gay and Bisexual) Londoners are significantly more likely than heterosexual Londoners to have experienced hate crime targeted at

⁴⁰ [Scope, 'Travel Fair' \(September 2019\).](#)

⁴¹ [Scope, 'Independent. Confident. Connected' \(2018\) p 20.](#)

⁴² [Transport for London, 'Travel in London: Understanding our diverse communities 2019' \(2019\) para 4.22.](#)

⁴³ [Transport for London, 'Travel in London: Understanding our diverse communities 2019' \(2019\) para 5.19.](#)

⁴⁴ [Transport for London, 'Travel in London: Understanding our diverse communities 2019' \(2019\) para 5.20.](#)

themselves or witnessed it targeted at others in the past year (30% compared with 21%).⁴⁵

53. The evidence, therefore, points to the impact of behaviour such as harassment, hate crime and unwanted sexual behaviour falling hardest on those who share protected characteristics. Moreover, the fear of such incidents (both real and perceived) remains an often significant barrier to the greater participation of these people in public transport, particularly disabled people.

54. Such behaviour evidently requires the involvement of a third party, and so this barrier is particularly prevalent for those modes of transport - such as multi-person HARPS - where disabled people are sharing the service with other people.

55. HARPS also may also present a heightened risk for disabled passengers - the absence of a driver or staff member may exacerbate a disabled person's existing insecurities when travelling on public transport.

56. As such we think that there is a need for specific obligation on HARPS operators to address this issue. **We, therefore, support this proposal.**

57. HARPS, if designed correctly, present an opportunity to reconsider the role of human supervision if, for example, human assistants can remotely monitor and respond to potentially dangerous situations. Panic buttons or alarms could be mandated to allow for safe and discrete exits from the vehicles if a passenger feels threatened.

58. These ideas should not be conceived of as a new obligation on operators – many operators are already required to take action to reduce incidents of harassment or crime on their services. For example, currently the bus franchises issued by the UK's largest transport operator, Transport for London, require the operator to have

⁴⁵ [Transport for London, 'Travel in London: Understanding our diverse communities 2019' \(2019\) para 10.6.](#)

functioning CCTV and alarm systems during all operational times.⁴⁶ Furthermore, all bodies related to transport are, of course, already subject to the provisions in the EA 2010 governing harassment and the PSED (if they are exercising a public function).

59. We think, therefore, that comprehensive minimum accessibility standards should include obligations on HARPS operators to take reasonable steps to minimise the risk of harassment, assault or abuse to all passengers.

60. The concept of ‘reasonableness’ is well understood in the law, and we agree that the concept can be supported by additional guidance. We would emphasise that the guidance will need to take account of various factors, including the PSED outlined above, which would require them to have due regard to the effect of any guidance on people with different protected characteristics.

Consultation Question 25

We provisionally propose that the protections against discrimination and the duties to make reasonable adjustments that apply to land transport service providers under section 29 of the Equality Act 2010 should be extended to operators of HARPS. Do you agree?

61. Section 29 of the EA 2010 currently applies various duties to “service providers.”

These duties are:

- a. A duty not to discriminate in providing a service;⁴⁷
- b. A duty not to harass in providing a service; and
- c. A duty not to victimise in providing a service.

⁴⁶ D Wilkin, *Disability Hate Crime: Experiences of Everyday Hostility on Public Transport* (2020) p 13.

⁴⁷ This would include direct discrimination, indirect discrimination, disability arising from disability, and failure to make a reasonable adjustment.

62. These duties are at the heart of the protections of the EA 2010. Their application to “service providers” (whether public, private or voluntary sector) mirrors that of the pre-existing legislation (the Disability Discrimination Act 1995).
63. A “service provider” is a person who is concerned with the provision of a service to the public, or a section of the public, for payment or not.⁴⁸ On the face of it, an operator of a HARPS would fall within the definition of a “service provider”, and thus be subject to three duties outlined above.
64. As the Law Commissions note, however, the prohibition in section 29 of the EA 2010 is subject to the exceptions set out in Schedule 3 to the EA 2010.
65. In particular, Part 9 of Schedule 3 excludes some service providers of transport services from their duties under section 29 of the EA 2010, by stating that section 29 of the EA 2010 does *not* apply to them in relation to disability.⁴⁹
66. Specifically, paragraph 34 of Schedule 3 applies a blanket exemption in relation to “transporting people by land,”⁵⁰ unless the vehicle concerned is expressly listed.
67. As the Law Commissions note, HARPS are not currently listed. Without being listed, we agree that HARPS operators would technically be exempt from section 29, EA 2010, so far as it relates to disability discrimination.
68. We cannot see any reason why HARPS should not be included in the list and, therefore, required not to discriminate against their users on the basis of disability. The list is already comprehensive in terms of its coverage of land-based vehicles – for example, it already includes public service vehicles (e.g. buses),⁵¹ private hire vehicles⁵² and taxis.⁵³ The omission of HARPS from the list presumably reflects

⁴⁸ [Equality Act 2010, s 29\(1\).](#)

⁴⁹ [Equality Act 2010, sch 3, para 32.](#)

⁵⁰ [Equality Act 2010, sch 3, para 34.](#)

⁵¹ [Equality Act 2010, sch 3, para 34\(1\)\(f\).](#)

⁵² [Schedule 3, paras 34\(1\)\(d\) and \(e\), Equality Act 2010.](#)

⁵³ [Schedule 3, para 34\(1\)\(h\), Equality Act 2010.](#)

the time at which the legislation was passed (nearly a decade ago), when an awareness and discussion of these types of vehicles had not yet begun.

69. In particular, we think it would be wrong for what the UK Government rightly said was the “cornerstone of protection” for disabled people (namely the duty to make reasonable adjustments) not to apply to this new mode of transport without a clear and compelling justification.⁵⁴

70. Indeed the principal justifications advanced to date for exempting certain modes of transport from the duties of section 29 of the EA 2010 insofar as they apply to disability do not apply to HARPS. For example, the exception in relation to transport by air, provided by paragraph 33 of Schedule 3, was justified by the UK Government at the time on the basis that such services:

... are already subject to various international agreements ... the predominantly international nature of air ... travel has resulted in the view that it is best for any duties in this area to be as provided for under those agreements, rather than by importing separate, and possibly different, domestic duties.⁵⁵

71. Regardless of whether or not we think that this justification remains valid, it clearly does not apply to HARPS.

72. We, therefore, express our support for the Law Commissions’ provisional proposal. Ensuring that section 29 of the EA 2010 applies to HARPS operators from the very start is absolutely crucial. Not only does this mean immediate benefits and protections for disabled people, but it is far more efficient than trying to change the regulatory framework later down the line.

⁵⁴ *Hansard* (HL), 19 January 2010, vol 716, col 561 (Baroness Thornton).

⁵⁵ [House of Lords House of Commons Joint Committee on Human Rights, ‘Legislative Scrutiny: Equality Bill’ \(27 October 2009\). Memorandum submitted by Government Equalities Office Ev 38.](#)

73. The power to “add, vary or omit” an exception to section 29 is granted to the relevant Minister under paragraph 35 of Schedule 3 to the EA 2010.⁵⁶ We note that the Minister would be required to consult with the Commission before making any amendment, giving us further opportunity to input into any reform later down the line.⁵⁷

74. If section 29 of the EA 2010 is, in effect, extended through an amendment to paragraph 34 of Schedule 3 as set out above, we think that the following questions will also need to be considered once we have greater knowledge of how a HARPS provider will operate:

- a. Whether amendments to Schedule 2 to the EA 2010 are necessary.⁵⁸ Schedule 2 sets out the precise circumstances in which the duty to make reasonable adjustments applies to certain forms of service providers, for example whether they are required to make physical adjustments to their vehicles. Paragraph 3 of Schedule 2 currently covers transport;⁵⁹ and
- b. Whether there is a need for more specific provisions which relate to HARPS and their provision for disabled people, perhaps similar to the sections covering transport currently in the EA 2010.⁶⁰ For example, existing provisions which prevent a taxi or private hire operator from charging a disabled person more to travel with their assistance dog may need to be extended to apply to a HARPS vehicle.

75. Without further information on the operating model of HARPS, the Commission does not express a view on these two questions at this stage. We simply wanted to flag them to the Law Commissions and to note that any future discussions of these questions should involve the Commission from the outset.

⁵⁶ [Equality Act 2010, sch 3, para 35\(1\).](#)

⁵⁷ [Equality Act 2010, sch 3, para 35\(4\).](#)

⁵⁸ [Equality Act 2010, sch 2.](#)

⁵⁹ [Equality Act 2010, sch 2, para 3.](#)

⁶⁰ [Equality Act 2010, Pt 12.](#)

Consultation Question 27

We seek views on whether national minimum standards of accessibility for HARPS should be developed and what standards should cover

The need for national minimum standards

76. **We support this proposal.** Accessing transport presents one of the greatest challenges to disabled people; not only those with mobility impairments. Those with vision and hearing impairments, as well as mental health conditions, can also experience barriers to accessing transport.⁶¹

77. In a 2017 Commission report on being disabled in Britain, we wrote that:

Access to transport is an important part of independent living and participation in family and community. Transport options for disabled people are very limited because of the need to use only transport forms that are accessible, and these tend to be expensive. Disabled people report feeling ‘trapped’ by these high costs and limited options.⁶²

78. Unsurprisingly, therefore, the most recent statistics published by the UK Government for England show that:

... in 2018, the average number of trips for people who were affected a lot in their ability to carry out day-to-day activities by a disability or illness was less than 60% of the average for all adults.⁶³

79. Figures from Transport Scotland show that disabled people are significantly less likely to have access to a car or van, and are thus more reliant on public transport.⁶⁴

⁶¹ [House of Lords Select Committee on the Equality Act and disability, ‘The Equality Act 2010: the impact on disabled People’ \(Report of Session 2015-16\).](#)

⁶² [Equality and Human Rights Commission, ‘Being disabled in Britain’ \(2017\) p 124.](#)

⁶³ [Department for Transport, “National Travel Survey: England 2018” \(31 July 2019\).](#)

⁶⁴ [Transport Scotland, ‘Scottish Transport Statistics No 37’ \(2018\) para 2.17.](#)

80. HARPS present an opportunity to introduce a new form of transport that could revolutionise the lives of disabled people; presenting disabled people with a new form of accessible and affordable transport.

81. They also, however, present risks. The long, and often hard fought, battles for the introduction of mandatory accessibility standards may be undercut by these new technologies. HARPS have the potential to fundamentally change how transport is delivered in this country, without a proper consideration of the needs of disabled and older people. As Baroness Thomas of Winchester neatly put it:

As for transport, perhaps we will all be riding in driverless cars in 50 years, although I find that a terrifying thought. “Who will help us in and out?” I wonder.⁶⁵

82. In order for this opportunity to be maximised, and the risks to be minimised, we think that national minimum standards on accessibility are essential in order to embed principles of inclusive design throughout the HARPS network. The standards should aim to remove the barriers across the whole journey experience for disabled passengers.

83. Scope have written that, in order to reform transport to enable more disabled people to live independent, connected and confident lives:

...what is required is a commitment from those running the transport system to putting inclusivity at the forefront of their decisions.”⁶⁶

84. We think that a requirement to introduce accessibility regulations would demonstrate both governments’ and industry’s desire to fulfil this important commitment, and would align with the legal obligations under the PSED for governments across Great Britain

⁶⁵ *Hansard* (HL), 9 May 2019, vol 797, col 1319 (Baroness Thomas of Winchester).

⁶⁶ [Scope, ‘Independent. Confident. Connected’ \(2018\) p 21.](#)

85. The time to create these standards is now, before the mass roll-out of HARPS, and the associated infrastructure, has begun. As DPTAC rightly note:

In transport, where infrastructure lasts 100 years and vehicles 20 or more, producing something which excludes disabled people has a lasting negative impact.⁶⁷

86. The obligation of ensuring that *new* vehicles and infrastructure are accessible (in contrast to retrofitting existing vehicles and infrastructure) is also required under the UNCRPD. The CPRD Committee noted that:

A clear distinction should be drawn between [(1)] the obligation to ensure access [by disabled people] to all newly designed, built or produced objects, infrastructure, goods, products and services and [(2)] the obligation to remove barriers and ensure access [to disabled people] to the existing physical environment and existing transportation, information and communication, and services open to the general public.⁶⁸

87. We believe that the best way to ensure this obligation is met is through the adoption of new national minimum accessibility standards. This will ensure uniformity. Indeed, this is also the view endorsed by the CRPD Committee:

States parties need to set accessibility standards ... It is helpful to mainstream accessibility standards that prescribe various areas that have to be accessible, such as the physical environment in laws on construction and planning, transportation in laws on public aerial, railway, road and water transport, information and communication, and services open to the public ...⁶⁹

⁶⁷ [As quoted in Department for Transport, 'The Inclusive Strategy: Achieving Equal Access for Disabled People' \(July 2018\) p 48.](#)

⁶⁸ [UNCRPD, General Comment No. 2 on Accessibility \(2014\) para 24.](#)

⁶⁹ [UNCRPD, General Comment No. 2 on Accessibility \(2014\) paras 25 and 29.](#) See also [Committee on the Rights of Persons with Disabilities, Communication No. 21/2014.](#)

88. We believe that solely relying on the existing reasonable adjustments duty under the EA 2010 is not sufficient to ensure that disabled people have equal access to HARPS for two reasons:

- a. Paragraph 3 of Schedule 2 to the EA 2010 states that, in relation to the provision of a service which involves “transporting people by land, air or water,” it is “never reasonable for A [the service provider] to have to take a step which would involve the alteration or removal of a physical feature of a vehicle used in providing the service”.⁷⁰ In other words, in order to secure genuine accessibility, the legislative ‘lever’ needs to be national minimum accessibility standards, rather than reliance on the duty to make reasonable adjustments.
- b. In our experience, transport providers do not always understand the concept of reasonable adjustments, which can lead to inconsistency in the application of the requirement and, therefore, uncertainty for disabled passengers in what they can expect. We think it is better for more clearly defined minimum accessibility standards to be created, for which HARPS operators can be more easily held to account.

89. The introduction of these new accessibility regulations for HARPS should not be seen as an inconvenience for the industry, but rather as an opportunity to benefit all users of their service. As Scope wrote,

By building inclusivity into their future designs, operators will be better serving a wider consumer base from the start.”⁷¹

90. Finally, we believe that regulations, written into legislation, are required, rather than lighter-touch options such as industry guidance in this important area. In the debates on the Bus Services Bill, Baroness Campbell of Surbiton, strongly argued that promises of a guidance document from the Government on accessibility were not enough, and we share her view:

⁷⁰ [Equality Act 2010, sch 2, para 3.](#)

⁷¹ [Scope, ‘Travel Fair’ \(September 2019\) p 35.](#)

Guidance without statutory backing or any enforcement behind it can be ignored with impunity—and, let us face it, we have plenty of experience of public services doing just that. Guidance is fine, but we know that it can be left on the shelf and ignored. People may start with good intentions but, in reality, other priorities invariably get in the way.⁷²

The content of such regulations

91. The Commission acknowledges that it is not best placed to suggest the detailed, technical content of these regulations. We would, however, emphasise that any new regulations need to be clear and ambitious; specific (tailored to HARPS) and standardised. Disabled and older people’s organisations must be involved from the start to co-design their content.⁷³ Our view, in this regard, mirrors that of the CRPD Committee.⁷⁴

92. The aim of such regulations must be to:

... contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers. Persons with disabilities and other users should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary.

⁷² *Hansard* (HL), 24 October 2016, vol 776, col 48 (Baroness Campbell of Surbiton).

⁷³ See also, Article 4(3) of the UNCRPD: “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

⁷⁴ [UNCRPD, General Comment No. 2 on Accessibility \(2014\) para 25.](#)

93. In terms of the content of such regulations, we would note the value of the principles of universal design,⁷⁵ as a useful international standard.⁷⁶

94. We also lend our support to the view of the CRPD Committee that the standards must reflect the broad spectrum of disabilities that exist:

When defining accessibility standards, States parties have to take into account the diversity of persons with disabilities and ensure that accessibility is provided to persons of any gender and of all ages and types of disability. Part of the task of encompassing the diversity of persons with disabilities in the provision of accessibility is recognizing that some persons with disabilities need human or animal assistance in order to enjoy full accessibility (such as personal assistance, sign language interpretation, tactile sign language interpretation or guide dogs).⁷⁷

95. It is essential for accessibility to be considered more broadly than simply vehicle design. The accessibility of the whole user experience, from first ordering the service right through to the final destination needs to be considered. Roadside infrastructure requires a particular focus considering issues such as audio-visual announcements at bus stops are still a rarity in this country. The Law Commissions have also already rightly flagged the issue of ‘digital exclusion’ if these HARPS vehicles can only be ordered online/through a mobile-based application. They noted that this has the potential to impact most negatively on disabled and older people, and we share this concern.⁷⁸

96. We suggest, moreover, that any associated guidance with any regulations is issued by an organisation exercising public functions (rather than, for example, an industry

⁷⁵ <http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>

⁷⁶ [See the UNCRPD, General Comment No. 2 on Accessibility \(2014\) para 15.](#)

⁷⁷ [UNCRPD General Comment No. 2 on Accessibility \(2014\), para 29.](#) For further existing guidance to businesses on assistance dogs produced by the Commission see: [Equality and Human Rights Commission, ‘Assistance dogs: A guide for all businesses’ \(2017\).](#)

⁷⁸ [Law Commission of England and Wales CP No 245; Scottish Law Commission DP No 169, ‘Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport’ paras 6.22 to 6.47.](#)

working group). This will ensure that the requirements of the PSED have to be complied with in designing any such guidance.

97. We believe that one lesson to learn from the current system of transport regulation in Great Britain is that any new accessibility regulations must have:

- a. statutory backing;⁷⁹
- b. clear penalties for failure to adhere with them; and
- c. the designation of a national regulatory body(ies) (funded through a sustainable funding model) to systematically deal with passenger complaints; monitor compliance and enforce breaches.

98. Accountability is key. As Scope recently noted on the current system of transport regulation:

Fragmentation means that individual operators are not accountable to a single body, leading to difficulty in enforcing regulations and a lack of clarity as to who passengers should speak to about individual issues.⁸⁰

99. In their evidence to a House of Lords Select Committee, DPTAC's evidence reinforces the importance of an emphasis on enforcement:

Although much of the basic accessibility provision is now in place through the construction requirements for rail and bus there is little effort going into making sure that accessibility features are consistently in place and working.⁸¹

⁷⁹ Our preference, therefore, would be for these standards to be defined in secondary legislation (regulations). One way this could happen is for the EA 2010 to be amended to provide the option for the Secretary of State to make regulations in terms of accessibility. In relation to both taxis and public service vehicles, the EA 2010 made provision for accessibility regulations to be made (ss 160 and 174, EA 2010 respectively, although s 160 is not yet in force).

⁸⁰ [Scope, 'Travel Fair' \(September 2019\) p 35.](#)

⁸¹ [House of Lords Select Committee on the Equality Act and disability, 'The Equality Act 2010: the impact on disabled People' \(Report of Session 2015-16\) para 275.](#)

100. A national system of operating licences for HARPS, as proposed by the Law Commissions and supported by the Commission in our response to Consultation Question 1, above, should support such consistent monitoring and enforcement.