

North Yorkshire County Council

Business and Environmental Services

Executive Members

20 August 2021

Continued Use of Department for Transport PSVAR Exemptions

Report of the Assistant Director – Travel, Environmental and Countryside Services

1.0 Purpose of Report

- 1.1 To consider further extensions to Department for Transport (DfT) exemptions to the PSVAR regulations to enable the sale of spare seats on NYCC contracted home to school transport services during 2021/22 academic year.

2.0 Background

- 2.1 Following a public consultation, in May 2020 a report was taken to The Executive in relation to the sale of spare seats on NYCC contracted home to school transport services. The report can be found at [06 PSVAR Report & Appendices.pdf \(northyorks.gov.uk\)](https://www.northyorks.gov.uk/06-PSVAR-Report-Appendices.pdf)
- 2.2 The report set out four options in relation to the future of selling spare seats to pupils not entitled to home to school transport and Post 16 pupils on vehicles that are 22 seats or more in size.
- 2.3 At that time members agreed that option 4 should be implemented in September 2020 and this meant that we took advantage of the Local Authority DfT Exemption 1's that we had applied for in January 2020.
- 2.4 The previous consultation undertaken between 14 February and 19 April 2020 and detailed in the report, set the principle of adopting Option 4 making use of any available Government exemptions for home to school transport going forward.
- 2.5 The Exemption 1's were applied for specifically by Local Authorities and were issued to us by DfT until December 2021. DfT advised at that time that they were likely to extend the Exemption 1's until December 2023.
- 2.6 During the 2020/21 academic year we have implemented the decision made by members and sold passes on services where we had exemptions or where it was legal to do so. This was a challenge to administer as Exemption 1 had very specific criteria and in particular only permitted the sale of 20% of seats on each service. This meant that we had to allow some pupils who had previously paid to travel free and had to refuse travel to others even where we had a spare seat.
- 2.7 The Assistant Director TECS and Transport Board have continually reviewed the position over the last 12 months and officers have been in correspondence with the DfT to seek clarification as to what the position would be after December 2021.

3.0 DfT Update Letter (Position from 1 August 2021)

- 3.1 On the 6 July 2021 Baroness Vere issued a letter to the bus industry regarding new arrangements that the DfT have put in place in relation to exemptions from the PSVAR from 1 August 2021. We were sent a copy of this letter for information and it is attached as Appendix 1.
- 3.2 The letter sets out an offer to bus operators to apply for a further Exemption up to 31 March 2022 as set out below.

Supporting Essential Services: Short Term (August 2021 to 31 March 2022) In order to enable essential HTS services to continue operating in the immediate term we will consider applications for temporary exemptions (“Special Authorisations”) until 31 March 2022 for closed door home to school services, from August 2021, on the same terms as exemptions offered in Summer 2020

- 3.3 The temporary exemptions that the letter refers to are extensions to the Exemption 3’s which are available to bus operators only and not LA’s. The Exemption 3 does not have the same restrictions as the Exemption 1’s and allows a complete exemption from the PSVAR without specific criteria like the previous 20% of seats.
- 3.4 The letter explains the importance of bus operators working towards a PSVAR compliant fleet and network but also sets out plans for a possible medium term exemption after March 2022. In addition a review of PSVAR which is being undertaken during 2022. Further details are not yet available as to what plans may be in place from 1 April 2022.

4.0 Proposals

- 4.1 Transport Board have considered the options available to the authority in relation to the sale of spare seats on our services during 2021/22 academic year.

The options considered are;

- A. We don’t get any further temporary extensions to the exemptions and don’t sell any passes on vehicles that aren’t compliant for September 2021 – At this late stage we will be letting a lot of families down with no notice
- B. We don’t get any further temporary extensions to the exemptions and let all pupils travel free from September 2021
- C. We ask bus operators to apply for the “Short Term” Exemption system which allows us to charge up until 31 March 2022 and then we would have to allow free travel for the summer term (unless something else changes before then or some of our providers qualify for the “medium term” exemption mentioned in the letter)

- 4.2 It was agreed at the meeting on 14 July 2021 that given the late notification of the position by the DfT, the only practical option from September 2021 is C above and that we should ask our bus operators to apply for the extension to exemptions offered by the DfT.
- 4.3 As the exemptions must be applied for by the bus operators, we will work closely with them to manage and monitor that the necessary exemptions are in place prior to charging passengers to ensure continued compliance with PSVAR.

- 4.4 In the exemption application pack issued to bus operators on the 5 August 2021 the following is a condition of them being issued with the exemption.

<p>Confirmation disabled passengers unable to use non-compliant vehicles will be provided with alternative transport.</p>	<p>Applicant operators must confirm that passengers who cannot access vehicles covered by an exemption because they do not comply with PSVAR will be provided with alternative transport. Where the service in question is commissioned by a third-party, such as a school or local authority the applicant must obtain and retain on file written confirmation that such alternative transport will be provided. "Yes" must be selected in answer to this question to confirm that such arrangements will be made.</p>
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- 4.5 We will therefore need to support each provider with a statement of our commitment to adhere with the point above. During 2020/21 or the preceding five years, we have not had any such requests from pupils with a disability.
- 4.6 From September 2021 all those who apply for Paid Travel Permits will have their application assessed and where there is a spare seat available they will be allocated using the relevant criteria and they will be charged until 31 March 2022. Unless further exemptions are available, no charges will apply between 1 April and 31 July 2022 but pupils will still be able to travel until the end of the Summer Term 2022.
- 4.7 Due to the type of temporary exemptions available from 1 August 2021 point's f. and g. in Option 4, detailed in the May 2020 report are no longer applicable and all pupils will be able to apply for and pay for a pass where available.

5.0 Legal Implications

- 5.1 The application of equalities legislation means the Council cannot charge for the use of spare seats on home to school transport where the vehicle used is not either compliant or otherwise exempt from Public Service Vehicle Accessibility Regulations. Most vehicles used for home to school transport do not comply with the Regulations but these further temporary Government exemption extensions mean that the Council can take applications and charge for most spare seats.
- 5.2 The Council is subject to the public sector equality duty set out in Section 149 of the Equalities Act 2010 (EqA2010) which requires public authorities to have due regard to :
- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equalities Act 2010 (section 149(1)(a)).
 - The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b)). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(4)); and
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it (section 149(1)(c)). This includes having due regard to the need to tackle prejudice and to promote understanding (section 149(5),
- 5.3 Section 29 of the Equalities Act 2010 imposes a duty to make reasonable adjustments in providing services and public functions, which includes the provision of home to school transport. This duty arises where people with disabilities are placed at a substantial disadvantage.
- 5.4 Where the duty arises the Council must take such steps as is reasonable to avoid the disadvantage or adopt a reasonable alternative method of providing the service. The continued use of temporary exemptions is considered to be a reasonable and proportionate way of implementing the service in a way to avoid and limit any disadvantage.
- 5.5 The Council undertook extensive consultation prior to the May 2020 decision, the decision proposed to be taken now is similar, the Council are asked to consider the further extensions to the PSVAR to enable the sale of spare seats on the Council's contracted home to school transport services during the academic year 2021/22. The Council therefore rely upon that consultation.

6.0 Equalities Implications

- 6.1 The equalities impact assessment that was undertaken in May 2020 has been reviewed and revised as a result of the extension to the exemptions. This can be found at Appendix 2 and a summary below.
- 6.2 Following a challenge to past practice of making spare seats on home to school transport available to non-entitled and post 16 pupils for a fee, the Council has had to review its practice. The initial response was to cease charging for the use of spare seats in most cases, with a requirement that the provision of this discretionary service be reviewed following clarification of the legal position.
- 6.3 It is now clear that the application of equalities legislation means the Council cannot charge for the use of spare seats on home to school transport where the vehicle used is not either compliant or otherwise exempt from Public Service Vehicle Accessibility Regulations.
- 6.4 Most vehicles used for home to school transport do not comply with the Regulations but recent temporary Government exemptions will enable the Council to reintroduce charges for most spare seats if it chooses to do so.
- 6.5 Consultation has taken place on four options as to how the Council might respond. None are ideal as they all either reduce the ability for pupils to travel on spare seats or reduce the income the Council can receive for allowing them to do so. Some also impact more on pupils with protected characteristics.
- 6.6 The proposed option mitigates these impacts by a combination of measures:
- Restricting the future offer to new pupils for travel on spare seats to accessible vehicles only
 - Charging for travel using spare seats where it is legal to do so – taking advantage of any relevant Government exemptions

6.7 It is desirable that home to school transport is provided using accessible vehicles but this is not practicable in the short term and is not affordable. There is no legal requirement to use accessible vehicles other than when needed to meet the needs of a pupil, and the Council cannot therefore commit to using only accessible vehicles for the foreseeable future. However, offering spare seats on non-accessible vehicles has the potential to have a disproportionate impact on pupils with mobility needs and needs to be considered carefully.

6.8 The Council cannot refuse transport using a spare seat to a pupil simply because that vehicle is not capable of meeting the mobility need of the pupil. The Council has a duty to consider what reasonable adjustments might be made to enable the pupil to travel, which may include the replacement of the vehicle with an accessible one. This would almost certainly involve additional cost and may even be impossible to achieve within the constraints of the contract or the market. Selling of spare seats is a discretionary service so any disproportionate impact could be mitigated simply by withdrawing the service, or limiting it only to accessible vehicles. This provides equity but is an extreme response. Instead it is proposed that spare seats on all vehicles continue to be offered but it be made clear that the Council would welcome applications from pupils with mobility issues and all reasonable adjustments will be made to accommodate the request. Each case will have to be assessed on its merits and will be subject to the normal appeals process if any pupil is denied transport for whatever reason. This will satisfy the Council's statutory functions and enable the maximum number of pupils to benefit from the offer of a spare seat.

6.9 12 month review August 2021

The sale of passes has been continually monitored and reviewed throughout the year to ensure that any adverse impacts on young people were being mitigated and compliance with option 4 and the exemptions in place was happening.

The 12 month post implementation review highlighted the following points

- With the implementation of option 4 last September we saw a rise in the number of complaints received from parents of pupils who could not be sold a pass due to the restrictions on the services. This was due to the number of people that we had to turn down and we received many enquiries/complaints via MP's and local members particularly in the Autumn Term but also throughout the academic year.
- The public do not understand why when there is a spare seat that their child can't pay for it and travel. This resulted in an increased number of parents appealing to receive free home to school transport.
- Some schools have found it difficult to manage their bus services and secure compliant vehicles for their private contracts to enable pupils to continue their studies
- The last 12 months have been difficult to get a true picture of numbers of passengers and issues arising due to the continually changing arrangement with home to school transport as a result of the COVID pandemic and lockdowns etc.
- The Council has not seen the anticipated adverse impact it envisaged on the disability group of protected characteristics.

6.10 The proposal extends the adoption of option 4 until July 2022 so monitoring will continue as before and after a full review, the findings and impact in the first assessment remain unchanged but the Council will need to continually review the situation.

7.0 Financial Implications

7.1 Due to the delayed notification from the DfT in relation to further exemptions, the application process was only opened on 23 July so we do not have sufficient data about pupil applications yet to work out the actual financial implications of the proposal.

7.2 However, the table below shows the estimated annual income and potential lost income for the Summer Term based on last year's pupil numbers.

7.3 The figures assume all passes are full permits and not part week permits and does not account for any low income families that do not pay the full amount.

	Post 16	Paid Permits	TOTAL
Permit Rate 21/22	£618	£550	
Estimated Number of Permits based on 2020/21	240	199	439
Full Academic Year Income	£148,320	£109,450	£257,770
Autumn 21 and Spring 22 only	£98,880	£72,967	£171,847
Income lost if can't charge for Summer Term 22	£49,440	£36,483	£85,923

7.4 To sum the financial position up

- If we collect income for the full year we will receive approximately £250K
- If we can only collect income for two terms we will receive income of approximately £171K
- This leaves a possible shortfall of £85K against the CYPS Home to School Transport budgeted position for 2021/22 if option C is agreed. This will be included in the year end forecast.

7.5 The approximate annual income that we receive from the total sale of passes is £550K. If we are not able to collect the summer term payment from the 400 pupils on the services that we have exemptions on the income would be reduced to around £465K during 2021/22 and this will need to be reflected in the forecast figures.

8.0 Climate Change Implications

8.1 Consideration has been given to the potential for any adverse climate change impacts arising from the recommendation. A Climate Change Impact Assessment is included as Appendix 3 of this report. There are no adverse impacts as a result of decision.

9.0 Recommendations

- 9.1 It is recommended that The Corporate Director, Business and Environmental Services (BES), in consultation with the Corporate Director, Children and Young People Services (CYPS), and the BES Executive Members agrees to:
- A. proceed with supporting bus operators in seeking further temporary DfT exemptions to enable the continued sale of spare seats during 2021/22 academic year and
 - B. Allow the sale of seats for those routes/buses which we are satisfied have an exemption in place

Michael Leah
Assistant Director - Travel, Environmental and Countryside Services

Report author: Catherine Price

Background documents: None



Department
for Transport

Appendix 1

Baroness Vere of Norbiton

Minister for Roads, Buses and Places

Great Minster House
33 Horseferry Road
London
SW1P 4DR

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E-Mail: baroness.vere@dft.gov.uk

Web site: www.gov.uk/dft

6 July 2021

Dear Trade Body Chief Executives,

Over the past year my Hon Friend, the Transport Accessibility and Rail Minister, Chris Heaton-Harris, has written to transport industry representatives on several occasions, expressing his deep dissatisfaction at operators' continued failure to comply with the Public Service Vehicles Accessibility Regulations 2000 (PSVAR) in the home-to-school (HTS) and rail replacement (RR) sectors.

The Regulations have revolutionised disabled people's access to local buses and long-distance coaches, but it is unacceptable that, two decades after their introduction, a lack of compliant coaches continues to prevent disabled school pupils and railway passengers from travelling on the same services as non-disabled people. It cannot be right that in 2021 disabled people can still be required to use segregated services regardless of their wish, or otherwise, to do so, and I am determined that this will change.

Local authorities, schools, colleges and transport operators must focus now on how they can provide services inclusively rather than seeking to avoid their legal obligations. It is my firm view, supported by our statutory advisors, the Disabled Persons' Transport Advisory Committee, that disabled people must have the right to travel like anybody else, and that organisations commissioning and operating services must play their part in making this possible.

To this end, I am writing not only to explain our longer-term plans for ensuring that bus and coach services are available to all, but also to ask the industry to focus now on what it can do to ensure that services today are provided inclusively.

The Future of Bus and Coach Accessibility

In March the Government published its National Bus Strategy for England, “Bus Back Better”, including a commitment to complete a review of PSVAR by the end of 2023. This review will ensure that the accessibility of bus and coach services continues to be informed by the needs and expectations of disabled passengers for the foreseeable future. I know that you will be eager to participate in the process and look forward to your support.

I am however also aware that PSVAR does not currently cover every service that a disabled person might seek to use, and that the exclusion of vehicles used for private hire work may have contributed to a lack of compliant vehicles available for HTS and RR services. Disabled people should be able to take coach holidays or to join their clubs and societies on days out without having to procure alternative transport, potentially at higher rates, and I have asked officials, as part of the review, to consider specifically how such services could be brought within scope of the Regulations. I understand that wheelchair lifts are sometimes removed from coaches when they cease to provide Scheduled services and have asked my officials also to explore whether this practice can be stopped, including in law.

Supporting Essential Services: Medium Term (from 2022 onwards)

HTS services are essential for ensuring children can travel to and from school in safety and rail replacement services ensure passengers can reach their destinations when services are disrupted. Whilst I recognise reluctantly that exemption from some PSVAR provisions cannot be avoided until there are sufficient compliant vehicles to meet demand, I am clear that such exemptions must not incentivise operators to stop investing in their fleets, and nor should they support delaying the making of accessibility improvements where doing so now is feasible.

I have therefore asked officials to develop plans for medium-term exemptions to begin in 2022, available only to operators which can demonstrate the steps they have taken proactively to provide compliant services. Whilst eligibility rules will be communicated in due course, and subject to consultation, I have asked my officials to explore only providing exemptions for the wheelchair requirements (Schedule 1 of the Regulations) and not for steps, gangways, handrails, etc (Schedule 3), unless some of the requirements in Schedule 3 cannot reasonably be complied with in the time available. Operators may also be expected to operate a minimum number of fully compliant vehicles in order to be eligible for any exemption. All operators should begin planning now if they anticipate requiring exemptions from 2022 onwards.

The 2022 exemptions will replace any exemptions issued to date.

Supporting Essential Services: Short Term (August 2021 to 31st March 2022)

In order to enable essential HTS services to continue operating in the immediate term we will consider applications for temporary exemptions (“Special Authorisations”) until 31st March 2022 for closed door home to school services, from August 2021, on the same terms as exemptions offered in Summer 2020.

Operators which may need to apply for these exemptions should email the Department now, at HometoSchoolExemptions@dft.gov.uk in order to be informed when application arrangements are released.

Train Operating Companies will be informed of any further arrangements for rail replacement services through the Rail Delivery Group.

Supporting services accessible to everyone

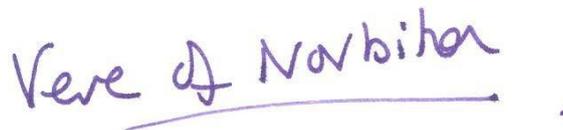
Twenty one years after PSVAR were introduced it cannot be right that disabled people still cannot travel as easily or confidently as non-disabled people, or without incurring additional cost. The exemptions we are offering are essential to enable vital services to run but they must not be used as a licence to discriminate. Train Operating Companies will still be expected to provide rail replacement services using compliant vehicles wherever possible, and I will write separately to the Rail Delivery Group specifying my continuing expectations of the rail industry and the requirements on them. Local authorities, schools and colleges must also take responsibility for procuring inclusive services. We will work with the Department for Education and the Devolved Administrations to inform commissioners of HTS services of our expectations, and to remind them of their legal equalities’ duties, with which they remain responsible for complying with.

I know that you recently met with my officials and I understand that was a helpful and constructive meeting. I welcome the trade bodies’ efforts to consider how bus and coach services can meet the needs of all their passengers including, for instance, taking proactive steps to investigate more inclusive approaches for providing step-free access to high-floor coaches. My officials stand ready to discuss the application of PSVAR with you further, and I hope that you will

continue to work with us, helping your members to understand our expectations, harnessing their collective knowledge and expertise, and thinking creatively about solutions to the challenges that disabled people continue to face.

Breaking down the barriers that still prevent disabled people living the lives they want to is the duty of each of us, rather than someone else's problem – and we must all do our bit to provide transport that enables access and promotes independence, helping disabled people to fulfil their potential.

I trust I can rely on your support to make this happen.

A handwritten signature in purple ink that reads "Vere of Norbiton". The signature is written in a cursive style and is underlined with a single horizontal line.

BARONESS VERE OF NORBITON

Equality impact assessment (EIA) form: evidencing paying due regard to protected characteristics

(Form updated April 2019)

**Home to School Transport – Use of Accessible Vehicles and Provision of Transport for
Non-Entitled and Post 16 Pupils.**

If you would like this information in another language or format such as Braille, large print or audio, please contact the Communications Unit on 01609 53 2013 or email communications@northyorks.gov.uk.



যদি আপনি এই ডকুমেন্ট অন্য ভাষায় বা ফরমেটে চান, তাহলে দয়া করে আমাদেরকে বলুন।

如欲索取以另一語文印製或另一格式製作的資料，請與我們聯絡。

اگر آپ کو معلومات کسی دیگر زبان یا دیگر شکل میں درکار ہوں تو برائے مہربانی ہم سے پوچھئے۔

Equality Impact Assessments (EIAs) are public documents. EIAs accompanying reports going to County Councillors for decisions are published with the committee papers on our website and are available in hard copy at the relevant meeting. To help people to find completed EIAs we also publish them in the Equality and Diversity section of our website. This will help people to see for themselves how we have paid due regard in order to meet statutory requirements.

Name of Directorate and Service Area	Business and Environmental Services – Transport Waste and Countryside Services
Lead Officer and contact details	Andy Holmes 2357
Names and roles of other people involved in carrying out the EIA	Ian Fielding Assistant Director, Transport Waste and Countryside Services Andy Holmes – Service Improvement Officer
How will you pay due regard? e.g. working group, individual officer	As a working group
When did the due regard process start?	February 2020 Refresh August 2021 following receipt of letter from DfT

Section 1. Please describe briefly what this EIA is about. (e.g. are you starting a new service, changing how you do something, stopping doing something?)

North Yorkshire County Council has a duty to provide home to school transport free of charge to all entitled children up to the end of year 11. There are currently over 12,500 pupils entitled for free home to school transport in North Yorkshire.

The Council also has a duty to assist in the provision of transport for 16-19 year old pupils to travel to sixth form or college. This can be through the provision of transport (e.g. on a bus or by taxi) or by making a financial contribution towards cost. Where the Council provides home to school transport for post 16 pupils it is allowed to recover a contribution towards its costs.

Where the Council arranges transport for entitled pupils there may be spare seats on the vehicles, which it has previously offered to non-entitled and post 16 pupils for a fee.

Spare seats have been allocated according to criteria that prioritise factors such as whether a child has any special educational needs; whether siblings already travel on the vehicle; and the stage the child is at in their education. The number of spare seats available on any home to school service varies each year as the number of entitled pupils changes.

Allowing non-entitled and post 16 pupils to travel using spare seats on home to school transport has made effective use of spare capacity in the service; provides a safe and effective service for pupils not entitled for free transport; reduces congestion and also generates valuable income to the Council. Using spare seats is also environmentally better and helps reduce greenhouse gas emissions and improve air quality.

The County Council's Executive considered a report on 3 September 2019 which highlighted a legal challenge to the Council's approach to the provision of home to school transport for non-entitled¹ and post 16 pupils.

The challenge centred on the ability of non-entitled and post 16 pupils to 'buy' spare seats on vehicles that were used for home to school transport provided by the Council, but which were not accessible for people with mobility needs. It was alleged that this practice was contrary to the requirements of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR).

The Executive resolved on 3rd September 2019 to stop charging for the use of spare seats in most cases in order to ensure legal compliance, and asked for further report be brought to the Executive prior to the end of the 19/20 academic year with either:

- a) Proposals to reintroduce charges where suitable clarification or a change in law has been provided that would enable the reintroduction of such charges or, in the event that clarification or a change in law is not provided by that time;
- b) Long term proposals to address the application of PSVAR to home to school transport including recommendations as to whether the Council ceases to provide transport using spare seats on buses that do not comply with PSVAR or continues to offer them free of charge.

It is now clear that PSVAR does apply to home to school transport where provided using vehicles with over 22 seats, but from January 2020 the Government has offered some further exemptions for home to school services that carry fewer than 20% of fare paying passengers. These exemptions apply until December 2021 with the potential of a further extension up to December 2023.

¹ The term non-entitled in this report and related consultation refers to those pupils who are deemed not eligible for free home to school transport as determined under the Education Act 1996

There is no specific legal obligation for the Council to require all vehicles used for home to school transport to be accessible, and practice is that any entitled pupil that requires an accessible vehicle is provided one. Entitled pupils with mobility needs are always provided with a suitable vehicle that allows them to be transported in safety and comfort (including in their wheelchair if appropriate). Unlike commercial bus service operators, the Council knows in advance whether pupils routinely require accessible transport and it is provided when necessary. Prior to the recent challenge the Council has not been pressed by parents, pupils or schools for most mainstream school transport to be accessible.

When the Council puts home to school transport services out to tender, unless it is specified that an accessible vehicle is required, operators are free to offer accessible or non-accessible vehicles. Contracts are then awarded on the basis of the lowest cost to the Council (subject to meeting minimum quality standards). Procurement in this way ensures a transparent and cost effective service and provides for greatest competition between both small and large operators.

Most vehicles used on mainstream home to school transport are not currently accessible. The Council is not under any obligation to procure accessible vehicles, provided the mobility needs of any entitled pupil are met. However, it is recognised that there would be wider benefits in doing so as it would help increase the numbers of accessible vehicles within the industry and therefore improve the general accessibility of public transport.

The Council is currently working with operators to identify ways in which we can be more innovative in our procurement of home to school services to help encourage the use of more accessible vehicles. This will take time to establish and in the meantime using more accessible vehicles on home to school transport will increase Council costs.

A recent tender for home to school transport indicated that the costs of PSVAR compliant coaches would be nearly £12,000 more per vehicle than for a non-compliant coach. This would scale up to an additional annual cost in excess of £2.7million if home to school services were provided using only accessible vehicles across the whole of North Yorkshire. It is also highly unlikely that operators would be able to secure enough vehicles to ensure all home to school transport was provided using accessible vehicles within a timescale for this to be a realistic option in the short term.

This level of additional cost would impact significantly on Council resources and it is therefore proposed that the Council continues to allow operators to use non accessible vehicles for home to school transport, unless otherwise required by law or to meet the mobility needs of pupils.

The requirement is now to determine if and when the Council will require the use of accessible vehicles for home to school transport in future, and under what circumstances, if any, transport will be provided for non-entitled and post 16 pupils.

August 2021

In July 2021 the Department for Transport (DfT) issued guidance to bus operators to advise that in order to enable essential home to school services to continue in the short term, temporary exemptions for closed door home to school services will continue from August 2021 until 31 March 2022, for all services.

Further Medium Term exemptions may be available for operators from April 2022 onwards, and the Council's position may need to be reviewed again as a result.

The exemptions available from August 2021 do not have the previous restriction of less than 20% of seats only being able to be sold to paying passengers. They are available for bus operators to apply for any service they provide.

Providing exemptions are available for the service that a non-entitled or Post 16 pupil wishes to purchase a seat on and there is a seat available we can offer a pass in line with the temporary exemption timescales.

Section 2. Why is this being proposed? What are the aims? What does the authority hope to achieve by it? (e.g. to save money, meet increased demand, do things in a better way.)

The proposals are a response to the need to reconsider the way home to school services are provided following a legal challenge. The aim is to be able to provide home to school transport for a range of pupils in accordance with the Council's legal duties, using accessible transport if required and considering whether it is proportionate and cost effective in other cases, making effective use of spare seats and ensuring that the Council complies with its equality duty and makes best use of its resources.

August 2021

The above is still relevant and remains the same

Section 3. What will change? What will be different for customers and/or staff?

Further to a public consultation on options for the use of accessible vehicles and spare seats on home to school transport, it is proposed that the Council continue to:

- a) Secure transport only for entitled pupils (i.e. the presumption is that post 16 and non-entitled pupils will make their own arrangements to travel to school (noting that Post 16 pupils may qualify for assistance from the Council - which may be by provision of transport or payment of an allowance)
 - b) Provide transport using the most proportionate and economic means of transport that is capable of meeting the needs of the pupil - including public train and bus services and taxis,
- and that
- c) Where entitled pupils do not have mobility needs that require accessible transport then the Council may fulfil those needs using vehicles that are not accessible.
 - d) Spare seats on vehicles procured for home to school transport may be offered to non-entitled and post 16 pupils and allocated according to the following criteria in order of priority:
 - I. Pupils with special educational needs or disabilities
 - II. Entitled Post 16 pupils
 - III. Previously travelled on vehicle
 - IV. Where siblings already travel
 - V. Other non-entitled pupils (including non-entitled post 16 pupils) according to distance
 - e) A charge will be made for the use of spare seats by non-entitled and post 16 pupils where the vehicle used is compliant with the requirements of PSVAR or otherwise exempt
 - f) Pupils with Paid Travel Permits currently travelling in spare seats on vehicles that are not compliant with the requirements of PSVAR, or otherwise exempt, will be able to continue to travel without charge for a period up to July 2021 - subject to the normal provisions that the offer can be withdrawn at any time if the seat is required for an eligible pupil, and on the understanding that a charge can be introduced with at least one month's notice if the vehicle either becomes exempt from PSVAR or is replaced with another vehicle that is compliant or otherwise exempt.

- g) Daily fares paid for the use of spare seats will only be taken where vehicles are accessible and comply with PSVAR.
- h) New applications for use of spare seats will only be considered where vehicles are PSVAR compliant or otherwise exempt.
- i) The Council may require a PSVAR compliant vehicle to enable it to offer spare seats to non-entitled and post 16 pupils but will only do so where it is cost effective to do so.

The proposal is that these arrangements are effective from the start of the 2020/21 academic year

August 2021

In July 2021 the DfT have advised that in order to enable essential home to school services to continue in the short term, temporary exemptions for closed door home to school services will continue from August 2021 until 31 March 2022, for all services.

From September 2021 all those who apply for Paid Travel Permits will have their application assessed and where there is a spare seat available they will be allocated using the criteria in d. above and they will be charged until 31 March 2022. Unless further exemptions are available, no charges will apply between 1 April and 31 July 2022 but pupils can still travel until the end of the Summer Term 2022.

Due to the type of temporary exemptions available from 1 August 2021 point's f. and g. above are no longer applicable and all pupils will be able to apply for and pay for a pass where available.

Section 4. Involvement and consultation (What involvement and consultation has been done regarding the proposal and what are the results? What consultation will be needed and how will it be done?)

An extensive public consultation was open between 14 February and 19 April 2020. It was publicised on the County Council's consultation web pages and in addition nearly 3,000 Parents/Guardians of pupils who currently use the service and may be affected were sent letters telling them of the proposed changes, and information was sent direct to schools asking for their help to promote the consultation. Further promotion was carried out by direct contact with service provider(s), through staff bulletins and press releases. A copy of the consultation document is included in Appendix 1.

The primary purpose of the consultation was to seek views on the following issues:

- The use of non-accessible vehicles for home to school transport
- Whether and under what circumstances the Council should make any spare seats available on home to school transport available to non-entitled and post 16 pupils.
- The criteria to be used for allocating spare seats if the demand is greater than the number of seats available
- How the council should respond to consider the needs of people with disabilities when considering the use of spare seats

The consultation also allowed people to provide other comments

The consultation explained that:

1. There are often spare seats on home to school transport which the Council makes available to other non-entitled and post 16 pupils. About 2,300 non-entitled or post 16 pupils currently travel to and from school using spare seats.

2. Under certain circumstances the Council can charge for the use of these spare seats. The ability for the Council to make a charge is limited to where vehicles are accessible and comply with, or are exempt from, the requirements of the Public Services Vehicles Accessibility Regulations 2000 (PSVAR).
3. About 1,370 non-entitled or post 16 pupils are currently paying the Council approximately £270,000 per year to travel using spare seats. In addition, for a limited time the Council could lawfully charge a further 580 pupils which would generate an additional annual income for the Council of about £260,000.
4. About 370 non-entitled and post 16 pupils currently travel on vehicles that are not compliant or exempt from PSVAR and the Council cannot charge these pupils

The consultation document detailed 4 options

OPTION 1 – Transport only entitled pupils.

OPTION 2 – Charge where it is lawful to do so - but do not offer spare seats on vehicles where it would be unlawful to charge.

OPTION 3 – Charge where it is lawful to do so - and offer other spare seats for free

OPTION 4 - Combination of Option 2 and Option 3.

The consultation document identified Option 4 as the initial preferred option, subject to the outcome of the consultation; i.e. to charge for the use of spare seats where it is lawful to do so, but to allow other spare seats to be used for free up to the end of the 2020/21 academic year, and only to pupils already travelling (which are almost all sixth form or college students).

The implication of this option is that almost all pupils currently being transported will continue to be transported (at least until July 2021) and income to the Council from making a charge for spare seats will increase by £260,000 p.a. (at current charging rates) until the Government's temporary exemptions expire or vehicles can be replaced with accessible ones.

In total 380 responses were received in response to the consultation. A summary of the responses to the consultation is included as Appendix 2. The key points from the responses are:

- 82% (310) of respondents felt that the Council should only use accessible vehicles to transport pupils to and from school where required to meet the known needs of the pupils being transported (18% (69) responding that they should be always used regardless of cost and the needs of pupils)
- 85% (322) of respondents felt that spare seats should be offered to non-entitled and post-16 pupils regardless of whether the Council can charge for the use of the spare seat. 13% responding felt that spare seats should be offered only when we can charge for the use of the spare seat and 2% said spare seats should be never be offered
- 62% (234) of respondents felt that where the Council receives a request to use a spare seat on school transport from a pupil with needs that require an accessible vehicle the Council should provide an accessible vehicle if possible and within reasonable additional cost. 28% (105) responded that the Council should replace the vehicle with an accessible vehicle, or provide separate transport regardless of cost. 11% said we should decline to provide transport unless alternative
- When asked to prioritise a set of proposed criteria to use to allocate spare seats on vehicles for home to school transport there were mixed views with little differences overall between the order of preference as a proportion of overall scores. However, the ranking was as follows:
 - Pupils with special educational needs or disabilities
 - Previously travelled on vehicle
 - Where siblings already travel
 - Entitled post 16 pupils
 - Distance

- There were 38 suggestions for alternative criteria with the most popular being:
 - Where public transport is not available
 - Non entitled Post 16 students
- 58% (216) of respondents preferred the proposed option (option 4) for the use of spare seats – being a combination of Options 2 and 3 where the Council charge where it is lawful to do so and offer other spare seats for free, but only until July 2021. Option 3 (charge where it is lawful to do so and offer other seats for free) was the next preferred option by 28% (104) of respondents, with Option 2 (Charge where lawful to do so, but do not allow other spare seats to be used) was preferred by 12% (44) of the respondents and only 3% (11) preferred Option 1 (transport only entitled pupils).

The responses from the consultation are broadly supportive of the proposals but it is important to highlight that the strength of opinion on Q2 about when the Council should offer spare seats regardless of whether it can charge. Although an option for the Council, allowing the use of spare seats without charging was not one of the options put forward in Q5 and was excluded on the basis that offering spare seats is a discretionary service which it can legitimately charge for. The Council has a fiduciary duty to taxpayers which means it should act prudently and responsibly in the best interest of local tax payers. To not charge would mean passing over the opportunity to generate significant income for the Council, and would result in requests for the use of spare seats becoming unmanageable as a universal free service would mean numbers of applications would likely far exceed the number of available seats.

Analysis of responses for all questions shows that do not materially differ depending on the type of respondent except in a few cases:

- Q2 - When should spare seats on home to school transport be offered to non-entitled and post-16 pupils? 56% of responses from home to school operators felt that seats should only be offered where the Council can charge, compared with an overall response of 13% for this option.
- Q3 - When asked about provision of transport for non-entitled and post 16 pupils with mobility needs, responses from schools were split with 40% selecting the option that the Council should “Decline to provide transport unless alternative arrangements can be made without additional cost” compared to the overall response rate only 11%. The same number of schools (40%) also selected the option that the Council should “Provide an accessible vehicle if possible and within reasonable additional cost but do not replace the vehicle with an accessible vehicle”. This was the overall preferred option for 62% of respondents.
- Q4 – Responses on the priority for allocating spare seats were mixed across the types of respondent:
 - the majority of groups selected their 1st or 2nd priority to be “Pupils with special educational needs or disabilities”, except:
 - Schools, who ranked it as their 4th priority,
 - Parents/guardians of both non-entitled and post 16 students who ranked this as their 3rd priority
 - Schools, parents/guardians of non-entitled children, and younger persons selected “previously travelled” as their first priority, with other groups having mixed views across the range of options.
 - Service providers, parents/guardians of entitled children and post 16 pupils, chose “distance” to be the least important criteria whereas non-users of the service, younger persons and the disability group/forum ranked it as their 3rd priority. Schools ranked “distance” as their 2nd priority.
 - “Entitled post 16 pupils” is the first choice priority for parent/guardians of post 16 students, and second priority for non - users of the service, service providers and the disability group/forum. It is the fourth or fifth priority for other groups

- “Siblings already travel” is the second priority for parents/guardians of entitled and non-entitled children, with other groups ranking this as their 3rd priority or less
- Q5 - Which of the above options for the use of spare seats do you prefer? The overall preference with 58% of respondents was Option 4, the proposed option with the majority of respondents from all groups favouring this option except from:
 - The one response who identified as from a disability group/forum who selected Option 2 (Charge where lawful to do so but do not offer spare seats on vehicles where it would be unlawful to charge).
 - The responses from schools which were divided equally (50%:50%) between Option 4 (the preferred option) and Option 3 (charge where it is lawful to do so - and offer other spare seats for free)
 - Responses from young people which were mixed, although Option 4 (the preferred option) was the highest response at 38%.

It is also important to highlight that the responses to Q4 on how spare seats should be allocated differs from existing practice where preference for allocating spare seats is given to entitled post 16 pupils. The consultation did not highlight the difference between entitled and non-entitled post 16 pupils, and especially that the consequence of not allocating an entitled post 16 pupil with a spare seat is likely to be a higher cost to the Council arising from its obligation to offer alternative assistance. The consultation also didn't provide a choice between non-entitled and entitled post 16 pupil which may have helped bring out this point.

It is therefore proposed that greater priority be given to entitled post 16 pupils than indicated by the responses to the consultation, but that that it be second to the allocation to pupils with special educational needs or disabilities (SEND).

Respondents were also invited to provide further comments about the issues raised in the consultation. Comments were provided about issues relevant to the consultation but also about matters related to home to school transport policy. All comments are detailed in the Appendix but some themes can be identified within the responses that are commented on below.

August 2021

The previous extensive consultation undertaken between 14 February and 19 April 2020, and the outcomes described above, have set the principle of adopting Option 4 making use of any available Government exemptions for home to school transport. These temporary exemptions are now being extended further by DfT and are available to 31 March 2022.

No further consultation is proposed as the previous consultation was extensive, is still up to date and the principles largely remain as before and appropriate to the new exemptions and proposed option recommended for members to endorse.

	Theme	Comment
1	Home to school transport should be accessible and provided for all	The criteria for who is entitled and who is non-entitled is a matter of Council policy and not within the scope of this report. It is desirable that all vehicles used for home to school transport are accessible, and the Council is working with operators to help improve accessibility of the service, but it is currently not practical or affordable to use only accessible vehicles in the provision of home to school transport.
2	The Council should provide transport for post 16 pupils as they are required to remain in education	This is a matter of legislation and the Council policy abides with the law and is not within the scope of the matters under consideration however, the Council is legally obliged to provide assistance to entitled post 16 pupils to travel to school but is not required to

		provide transport. Assistance may include the offer of transport where it is available but may also include the offer of a parental allowance to help contribute towards costs. Council policy is that where assistance is provided the pupil is required to pay a contribution towards costs of £490 p.a.(2019/20)
3	Spare seats should be offered/offered and charged for.	This is the proposal set out within the consultation
4	The nature of the rurality of North Yorkshire impacts on the ability to get to school	This is recognised as a driver of cost for both parents and the Council. The rural nature of the County means that proportionally more pupils are eligible for free home to school transport, or assistance with transport, than in more urban areas. The limits of commercial bus services across much of the County means that home to school transport provision is largely reliant on taxis and coaches, and it is this reliance on coaches that has impacted the Council in respect of PSVAR, and created the need for this consultation. However, regardless of rurality, the Council continues to fulfil its duties to ensure entitled pupils are provided home to school transport.
5	The impact on the education of pupils if changes are made	The proposals within the consultation seek to minimise the impacts on pupils by continuing to offer spare seats for free until July 2021 for pupils currently travelling. It is also proposed to use Government exemptions from PSVAR to maintain transport for as many pupils as possible for as long as possible, but ultimately the ability to continue to make spare seats available for non-entitled and post 16 pupils will depend on being able to secure accessible vehicles in line with the resources available.
6	Reduction in the service will lead to more vehicles on road and increase environmental damage	It is acknowledged that this would be an undesirable outcome if the Council were to stop making spare seats available to non-entitled and post 16 pupils, and is one of the factors behind the proposal to continue to make spare seats available.
7	Affordability for parents	Affordability is a recognised issue and the Council's current policy is to offer a 50% reduction in charge for households with a low income.
8	SEND pupils should have access to transport/free transport	This is a matter of legislation and Council policy and not within the scope of the matters under consideration however, eligibility for free home to school transport is determined according to multiple criteria that include an assessment of a pupil's ability to safely walk to school. This will take into account any relevant special educational need or disability and means that transport is provided to meet the specific needs of pupils.

9	The Council has a statutory duty under equalities legislation to ensure it does not discriminate against pupils with disabilities	The Council's duties and obligations under equalities legislation are set out in Section 11 of this report.
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Section 5. What impact will this proposal have on council budgets? Will it be cost neutral, have increased cost or reduce costs?

Please explain briefly why this will be the result.

The Council currently only charges for spare seats on commercial services or vehicles that are less than 22 seats (and therefore exempt from PSVAR) or where daily fares are taken and vehicles are known to be accessible and compliant with PSVAR. The Council does not currently charge for spare seats on any non-accessible vehicles larger than 22 seats, or for any SEND pupils.

Council income based on 2019/20 full year charges is currently approximately £410,000 p.a.

The proposals detailed in this EIA include for taking advantage of temporary additional Government exemptions from PSVAR for vehicles over 22 seats where less than 20% of the seating capacity of the vehicle is paying, and for reintroducing charges for SEND pupils. These proposals would enable the further recovery of approximately £261k p.a. income at 2019/20 charging levels. These revenues are contingent on the ability to take advantage of the additional temporary Government exemptions which apply until December 2021, but which may be extended to December 2023. Without Government exemptions the additional income will be approximately £93,000 p.a. at 2019/20 charging levels.

August 2021

The table below shows the estimated annual income and potential lost income involved in getting the extended exemptions during 2021/22 academic year. The figures assume all passes are full permits and not part week permits and does not account for any low income families that do not pay the full amount.

	Post 16	Paid Permits	TOTAL
Permit Rate 21/22	£618	£550	
Estimated Number of Permits based on 2020/21	240	199	439
Full Academic Year Income	£148,320	£109,450	£257,770
Autumn 21 and Spring 22 only	£98,880	£72,967	£171,847
Income lost if can't charge for Summer Term 22	£49,440	£36,483	£85,923

Section 6. How will this proposal affect people with protected characteristics?	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
Age			X	<p>Post 16 pupils are not entitled to free home to school transport but may be entitled to assistance from the Council depending on their individual circumstances. Assistance can include the provision of transport using spare seats on Council provided services. Since July 2019, where this has been on vehicles with more than 22 seats that are not compliant with PSVAR the Council has waived the charge it would normally make for providing this assistance. The proposal is to reintroduce this charge where it would be lawful to do so. Post 16 pupils will be impacted proportionally more than younger pupils as they are currently approximately 360 post 16 pupils that will now be charged compared to approximately 220 younger pupils.</p> <p>August 2021 The Council has not seen the anticipated adverse impact it envisaged for this decision on this group of protected characteristics.</p> <p>The proposal to continue with temporary exemptions until March 2022 will not alter the current position for the majority of pupils. However there are a small number of pupils travelling who were not being charged as it was not lawful to do so. If they still wish to travel, these pupils will be charged from September 2021 to March 2022, unless further exemptions are available for the summer term. In which case charges will be applied to the end of the school year. The Council will carefully consider those that are adversely affected and monitor how mitigations can be taken to reduce this impact.</p>
Disability			X	<p>Since July 2019 the Council has suspended charges for home to school transport for all non-entitled and post 16 SEND pupils even where it would be lawful to charge. This was on the basis that charging where it was lawful to do so but allowing others using spare seats would have a disproportionate impact on SEND pupils as only 8% of SEND pupils would benefit from free travel compared to 31% of mainstream pupils.</p>

			<p>Following consultation, the proposals are now to reintroduce charges where it is lawful to do so and using new Government exemptions, and to limit the provision of free spare seats to those already travelling, and only until July 2021. The proposals now mean the proportion of mainstream pupils that will benefit from free travel is reduced to 11% which, is still higher than for SEND pupils, but comparable. From July 2021 there will be no difference with all non-entitled and post 16 pupils being charged. These adjustments are considered as reasonable and proportionate.</p> <p>The proposals also include for arrangements in the event of a disabled pupil requesting to travel to school using a spare seat on a non-accessible vehicle. It is recognised that the practice of offering spare seats on non-accessible vehicles has a disproportionate impact on people with disabilities in that they may be prevented from accessing this offer depending on any mobility need. The consultation invited views on this point and responses indicated support for the proposal that, in these circumstances, the preferred approach should be to secure a replacement accessible vehicle but where this is not possible or would entail unreasonable additional cost then transport is not provided.</p> <p>In practice, the Council will need to consider individual applications as to whether it can offer the discretionary service to individuals who benefit from the protection of the Equality Act 2010, and what reasonable adjustments might be necessary so that the individual pupil can access the discretionary service. It is not possible to legislate for every eventuality and the Council must recognise its duties under the Equality Act to have due regard to the need to:</p> <ul style="list-style-type: none"> • eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act; • advance equality of opportunity between people who share a protected characteristic and people who do not share it; and • foster good relations between people who share a protected characteristic and people who do not share it. <p>Decision makers need to be clear that they have paid due regard, and that they have considered mitigation and they have no other option but to pursue this course of</p>
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				<p>action. It is therefore proposed that each case be assessed on its merits against a framework that acknowledges vehicles used for home to school transport may not initially be accessible. Where a pupil with mobility needs applies for the use of a spare seat that application will be considered against the normal allocation criteria having regard to the requirement for the Council to consider what reasonable adjustments may be necessary to ensure the protection of those identified under the Equality Act.</p> <p>August 2021 The Council has not seen the anticipated adverse impact it envisaged for this decision on this group of protected characteristics.</p> <p>The proposal to continue with temporary exemptions until March 2022 will not alter the current position for this group and where adverse impact is identified careful consideration will be given to how mitigations can be taken to reduce this impact</p>
Sex	X			
Race	X			
Gender reassignment	X			
Sexual orientation	X			
Religion or belief	X			
Pregnancy or maternity	X			
Marriage or civil partnership	X			

Section 7. How will this proposal affect people who...	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
live in a rural area?	X			This is recognised as a driver of cost for both parents and the Council, and is a concern highlighted by some respondents to the consultation. The rural nature of the County means that proportionally more pupils are eligible for free home to school transport, or assistance with transport, than in more urban areas. The limited commercial bus services across much of the County means that home to school transport provision is largely reliant

			<p>on taxis and coaches, and it is this reliance on coaches that has impacted the Council in relation to PSVAR, and created the need for this review and consultation.</p> <p>However, regardless of rurality, the Council continues to fulfil its duties to ensure entitled pupils are provided home to school transport. The proposals have no direct impact on people living in rural areas other than they are more likely to be users of home to school transport.</p> <p>August 2021 The Council has not seen the anticipated adverse impact it envisaged for this decision on this group of protected characteristics.</p> <p>The proposal to continue with temporary exemptions until March 2022 will not alter the current position for this group of protected characteristics and where adverse impact is identified careful consideration will be given to how mitigations can be taken to reduce this impact</p>
...have a low income?	X		<p>The proposal is to reintroduce charges which were previously levied up to September 2019. There will therefore be an impact on any family with a low income that has been benefiting from free transport since that date. This is partially mitigated by the Council's policy of offering a 50% discount on the costs of home to school transport for families with a low income.</p> <p>August 2021 The Council has not seen the anticipated adverse impact it envisaged for this decision on this group of protected characteristics.</p> <p>The proposal to continue with temporary exemptions until March 2022 will not alter the current position for this group and where adverse impact is identified careful consideration will be given to how mitigations can be taken to reduce this impact</p>
...are carers (unpaid family or friend)?	X		<p>There is a potential for young people who are also carers to be charged or eventually denied the opportunity to travel in a spare seat on home to school transport under these proposals.</p> <p>NYCC offer support to young carers from 8 years of age tailored to the individual need and which can include advice and information, family support and support for the</p>

				<p>carer both in and out of school. Providing advice and assistance on a home to school transport issue would be included in the scope of assistance provided under this service. In addition, young carers who are entitled to Post 16 transport assistance already have their charge waived under the established procedure, so they would not be affected by re-introduction of charges for spare seats.</p> <p>August 2021 The Council has not seen the anticipated adverse impact it envisaged for this decision on this group of protected characteristics.</p> <p>The proposal to continue with temporary exemptions until March 2022 will not alter the current position for this group and where adverse impact is identified careful consideration will be given to how mitigations can be taken to reduce this impact</p>
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Section 8. Geographic impact – Please detail where the impact will be (please tick all that apply)

North Yorkshire wide	X
Craven district	
Hambleton district	
Harrogate district	
Richmondshire district	
Ryedale district	
Scarborough district	
Selby district	

If you have ticked one or more districts, will specific town(s)/village(s) be particularly impacted? If so, please specify below.

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Section 9. Will the proposal affect anyone more because of a combination of protected characteristics? (e.g. older women or young gay men) State what you think the effect may be and why, providing evidence from engagement, consultation and/or service user data or demographic information etc.

Yes.
The proposals will impact more on post 16 SEND pupils who are currently not being charged for home to school transport following suspension of charges in September 2019. The proposals are to reintroduce those charges to bring them in line with Mainstream pupils.

August 2021

The proposal to continue with temporary exemptions until March 2022 will not alter the current position for this group of protected characteristics and where adverse impact is identified careful consideration will be given to how mitigations can be taken to reduce this impact

Section 10. Next steps to address the anticipated impact. Select one of the following options and explain why this has been chosen. (Remember: we have an anticipatory duty to make reasonable adjustments so that disabled people can access services and work for us)	Tick option chosen
1. No adverse impact - no major change needed to the proposal. There is no potential for discrimination or adverse impact identified.	
2. Adverse impact - adjust the proposal - The EIA identifies potential problems or missed opportunities. We will change our proposal to reduce or remove these adverse impacts, or we will achieve our aim in another way which will not make things worse for people.	
3. Adverse impact - continue the proposal - The EIA identifies potential problems or missed opportunities. We cannot change our proposal to reduce or remove these adverse impacts, nor can we achieve our aim in another way which will not make things worse for people. (There must be compelling reasons for continuing with proposals which will have the most adverse impacts. Get advice from Legal Services)	X
4. Actual or potential unlawful discrimination - stop and remove the proposal – The EIA identifies actual or potential unlawful discrimination. It must be stopped.	
<p>Explanation of why option has been chosen. (Include any advice given by Legal Services.)</p> <p>Options 1,2,3 have been discounted as follows:</p> <p>OPTION 1 – Transport only entitled pupils This would mean removing the offer of transport to all 2,300 non-entitled and post 16 pupils to travel using spare seats and the 420 travelling on commercial services. This provides a robust response to the legal challenge and ensures equity across those in receipt of transport however, it creates significant difficulties for the 2,700 non-entitled and post 16 pupils who are currently offered transport using spare seats or on commercial services who would no longer be permitted to travel. This option would require those affected pupils to find alternative means of transport leading to increased congestion and emissions. It may impact on a parent's choice of school for their child and would also result in annual income to the Council reducing by over £410k p.a.</p> <p>OPTION 2 – Charge where it is lawful to do so - but do not offer spare seats on vehicles where it would unlawful to charge. Allowing for the recent Government exemptions, this option would enable about 2,400 of the 2,700 non-entitled and post 16 pupils currently using spare seats or travelling on commercial services to continue to travel, and would generate additional income for the Council of approximately £260,000 per year at 2019/20 charges.</p> <p>OPTION 3 – Charge where it is lawful to do so - and offer other spare seats for free. This option reduces inconvenience for existing travellers and helps reduce congestion and emissions by making best use of available seats. However, the obvious problem with this option is that it results in some pupils being charged and others not - which could be perceived as unfair. This option also has a disproportionate impact on pupils with special educational needs or disabilities (SEND) as once Government exemptions expire there would be approximately 30% non-entitled and post 16 mainstream pupils that would travel for free compared to only 8% for SEND pupils. For these reasons it is not considered as a suitable long term option</p>	

The proposed option:

OPTION 4 – Combination of Option 2 and Option 3. The proposed option mitigates the negative impacts of Option 3 and makes it more equitable by limiting the availability of free seats to those pupils already travelling, and offering free travel only for a limited period. This interim option would be combined with a policy of not accepting any new applications to use spare seats unless the vehicle concerned is compliant with PSVAR or otherwise exempt. Under this option the proportion of mainstream and SEND pupils benefiting from free travel will be more comparable at approximately 11% and 8% respectively. The proposal to not accept any new applications for spare seats unless the vehicle is accessible means that the proportion of mainstream pupils benefiting from free travel will reduce to approximately 7% in September 2020 as post 16 pupils finish their education. Free travel is time limited under this option until July 2021 meaning any perceived unfairness in charging most pupils but letting some travel for free is short term, with those benefiting being mostly post 16 pupils in the final year of their education.

This option therefore provides the most equitable outcome and provides a reasonable and proportionate solution.

The Council is subject to the public sector equality duty set out in Section 149 of the Equalities Act 2010 (EqA2010) which requires public authorities to have due regard to

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equalities Act 2010 (*section 149(1)(a)*).
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (*section 149(1)(b)*). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (*section 149(4)*); and
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it (*section 149(1)(c)*). This includes having due regard to the need to tackle prejudice and to promote understanding (*section 149(5)*,

In the consultation which has taken place on the options as to how the Council might address issues in home to school transport and it is appreciated that none are ideal. They all either impact more on pupils with protected characteristics, reduce the ability for pupils to travel on spare seats or reduce the income the Council can receive for allowing them to do so. The proposed option mitigates these impacts by a combination of measures:

- Restricting the future offer to new pupils for travel on spare seats to accessible vehicles only
- Charging for travel using spare seats where it is legal to do so – taking advantage of any relevant Government exemptions
- Allowing free travel using spare seats on vehicles where the council cannot charge to those pupils currently travelling, and for a maximum period up to the end of the 2020/21 academic year

Section 29 of the Equalities Act 2010 imposes a duty to make reasonable adjustments in providing services and public functions, which includes the provision of home to school transport. This duty arises where people with disabilities are placed at a substantial disadvantage.

Where the duty arises the Council must take such steps as is reasonable to avoid the disadvantage or adopt a reasonable alternative method of providing the service. The measures set out in the proposals are considered to be a reasonable and proportionate way of implementing the service in a way to avoid and limit any disadvantage. In considering the responses to the options in the consultation the Council has balanced and compared the alternatives and is seeking to provide an outcome which provides a service as close as possible to that enjoyed by pupils who do not have a disability.

The duty regarding reasonable adjustments is continual and will be revisited through the periodic reviews identified in this EIA.

August 2021

The implementation of option 4 in September 2020 set the principle of making use of any DfT exemptions for closed home to school transport services. The DfT has now made available extensions to the exemptions for these services to 31 March 2022.

Whilst the new exemption offer does mean that all pupils can now be charged for a pass, the principles behind adopting option 4, are still the same and appropriate and there is little change to the current position.

Section 11. If the proposal is to be implemented how will you find out how it is really affecting people? (How will you monitor and review the changes?)

Service demand will be monitored through applications over time, together with monitoring of numbers of appeals.

This will be done through a 6 and 12 month post implementation review.

August 2021

The sale of passes has been continually monitored and reviewed throughout the year to ensure compliance with option 4 and the exemptions in place.

With the implementation of option 4 last September we saw a rise in the number of complaints received from parents of pupils who could not be sold a pass due to the restrictions on the services. This was due to the number of people that we had to turn down and we received many enquiries/complaints via MP's and local members particularly in the Autumn Term but also throughout the academic year.

The public do not understand why when there is a spare seat that their child can't pay for it and travel. This resulted in an increased number of parents appealing to receive free home to school transport.

Some schools have also fed back that they have found it difficult to manage their services and secure compliant vehicles for their private contracts.

The last 12 months have been difficult to get a true picture of numbers of passengers and issues arising due to the continually changing arrangement with home to school transport as a result of the COVID pandemic and lockdowns etc.

The proposal extends the adoption of option 4 until July 2022 so monitoring will continue as before.

Section 12. Action plan. List any actions you need to take which have been identified in this EIA, including post implementation review to find out how the outcomes have been achieved in practice and what impacts there have actually been on people with protected characteristics.				
Action	Lead	By when	Progress	Monitoring arrangements
Determine operating procedure to consider application to travel using spare seat from non-entitled or post 16 pupil requiring accessible vehicle	IPT	30 June 2020	Complete	
Advise all stakeholders of revised process and procedures for allocating and charging for spare seats	IPT	30 June 2020	Complete	
6 month post implementation review	IPT	6 months after implementation:	Reviewed	
12 month post implementation review	IPT	12 months after implementation:	Reviewed	
Continue to review situation on an ongoing basis	IPT	Ongoing with exemption position review in December 2021		
<p>Section 13. Summary Summarise the findings of your EIA, including impacts, recommendation in relation to addressing impacts, including any legal advice, and next steps. This summary should be used as part of the report to the decision maker.</p> <p>Following a challenge to past practice of making spare seats on home to school transport available to non-entitled and post 16 pupils for a fee, the Council has had to review its practice. The initial response was to cease charging for the use of spare seats in most cases, with a requirement that the provision of this discretionary service be reviewed following clarification of the legal position.</p> <p>It is now clear that the application of equalities legislation means the Council cannot charge for the use of spare seats on home to school transport where the vehicle used is not either compliant or otherwise exempt from Public Service Vehicle Accessibility Regulations.</p> <p>Most vehicles used for home to school transport do not comply with the Regulations but recent temporary Government exemptions will enable the Council to reintroduce charges for most spare seats if it chooses to do so.</p> <p>Consultation has taken place on four options as to how the Council might respond. None are ideal as they all either reduce the ability for pupils to travel on spare seats or reduce the income the Council can receive for allowing them to do so. Some also impact more on pupils with protected characteristics.</p>				

The proposed option mitigates these impacts by a combination of measures:

- Restricting the future offer to new pupils for travel on spare seats to accessible vehicles only
- Charging for travel using spare seats where it is legal to do so – taking advantage of any relevant Government exemptions
- Allowing free travel using spare seats on vehicles where the council cannot charge to those pupils currently travelling, and for a maximum period up to the end of the 2020/21 academic year

It is desirable that home to school transport is provided using accessible vehicles but this is not practicable in the short term and is not affordable. There is no legal requirement to use accessible vehicles other than when needed to meet the needs of a pupil, and the Council cannot therefore commit to using only accessible vehicles for the foreseeable future. However, offering spare seats on non-accessible vehicles has the potential to have a disproportionate impact on pupils with mobility needs and needs to be considered carefully.

The Council cannot refuse transport using a spare seat to a pupil simply because that vehicle is not capable of meeting the mobility need of the pupil. The Council has a duty to consider what reasonable adjustments might be made to enable the pupil to travel, which may include the replacement of the vehicle with an accessible one. This would almost certainly involve additional cost and may even be impossible to achieve within the constraints of the contract or the market. Selling of spare seats is a discretionary service so any disproportionate impact could be mitigated simply by withdrawing the service, or limiting it only to accessible vehicles. This provides equity but is an extreme response. Instead it is proposed that spare seats on all vehicles continue to be offered but it be made clear that the Council would welcome applications from pupils with mobility issues and all reasonable adjustments will be made to accommodate the request. Each case will have to be assessed on its merits and will be subject to the normal appeals process if any pupil is denied transport for whatever reason. This will satisfy the Council's statutory functions and enable the maximum number of pupils to benefit from the offer of a spare seat.

August 2021

There was 6 and 12 month implementation reviews undertaken, to consider and ensure that any adverse impacts on young people are mitigated. The key points that came out of the review are described in Section 11 above.

In an environment where there continues to be insufficient suitable vehicles to achieve 100% PSVAR compliance, the DfT has made available temporary exemptions for closed Home to School services, to allow additional time for the market to react.

In the short term, temporary exemptions for closed door home to school services will continue from September 2021 until 31 March 2022, for all services.

The summary position previously described above remains the same as a result of the exemption extension but the Council will need to continually review the situation and in particular, having regard for the availability of vehicles as a result of COVID 19 and the DfT review of the PSVAR described in Baroness Vere's letter.



Department
for Transport

Baroness Vere of Norbiton
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6 July 2021

Dear Trade Body Chief Executives,

Over the past year my Hon Friend, the Transport Accessibility and Rail Minister, Chris Heaton-Harris, has written to transport industry representatives on several occasions, expressing his deep dissatisfaction at operators' continued failure to comply with the Public Service Vehicles Accessibility Regulations 2000 (PSVAR) in the home-to-school (HTS) and rail replacement (RR) sectors.

The Regulations have revolutionised disabled people's access to local buses and long-distance coaches, but it is unacceptable that, two decades after their introduction, a lack of compliant coaches continues to prevent disabled school pupils and railway passengers from travelling on the same services as non-disabled people. It cannot be right that in 2021 disabled people can still be required to use segregated services regardless of their wish, or otherwise, to do so, and I am determined that this will change.

Local authorities, schools, colleges and transport operators must focus now on how they can provide services inclusively rather than seeking to avoid their legal obligations. It is my firm view, supported by our statutory advisors, the Disabled Persons' Transport Advisory Committee, that disabled people must have the right to travel like anybody else, and that organisations commissioning and operating services must play their part in making this possible.

To this end, I am writing not only to explain our longer-term plans for ensuring that bus and coach services are available to all, but also to ask the industry to focus now on what it can do to ensure that services today are provided inclusively.

The Future of Bus and Coach Accessibility

In March the Government published its National Bus Strategy for England, "Bus Back Better", including a commitment to complete a review of PSVAR by the end of 2023. This review will ensure that the accessibility of bus and coach services continues to be informed by the needs and expectations of disabled passengers for the foreseeable future. I know that you will be eager to participate in the process and look forward to your support.

I am however also aware that PSVAR does not currently cover every service that a disabled person might seek to use, and that the exclusion of vehicles used for private hire work may have contributed to a lack of compliant vehicles available for HTS and RR services. Disabled people should be able to take coach holidays or to join their clubs and societies on days out without having to procure alternative transport, potentially at higher rates, and I have asked officials, as part of the review, to consider specifically how such services could be brought within scope of the Regulations. I understand that wheelchair lifts are sometimes removed from coaches when they cease to provide Scheduled services and have asked my officials also to explore whether this practice can be stopped, including in law.

Supporting Essential Services: Medium Term (from 2022 onwards)

HTS services are essential for ensuring children can travel to and from school in safety and rail replacement services ensure passengers can reach their destinations when services are disrupted. Whilst I recognise reluctantly that exemption from some PSVAR provisions cannot be avoided until there are sufficient compliant vehicles to meet demand, I am clear that such exemptions must not incentivise operators to stop investing in their fleets, and nor should they support delaying the making of accessibility improvements where doing so now is feasible.

I have therefore asked officials to develop plans for medium-term exemptions to begin in 2022, available only to operators which can demonstrate the steps they have taken proactively to provide compliant services. Whilst eligibility rules will be communicated in due course, and subject to consultation, I have asked my officials to explore only providing exemptions for the wheelchair requirements (Schedule 1 of the Regulations) and not for steps, gangways, handrails, etc (Schedule 3), unless some of the requirements in Schedule 3 cannot reasonably be complied with in the time available. Operators may also be expected to operate a minimum number of fully compliant vehicles in order to be eligible for any exemption. All operators should begin planning now if they anticipate requiring exemptions from 2022 onwards.

The 2022 exemptions will replace any exemptions issued to date.

Supporting Essential Services: Short Term (August 2021 to 31st March 2022)

In order to enable essential HTS services to continue operating in the immediate term we will consider applications for temporary exemptions ("Special Authorisations") until 31st March 2022 for closed door home to school services, from August 2021, on the same terms as exemptions offered in Summer 2020.

Operators which may need to apply for these exemptions should email the Department now, at HometoSchoolExemptions@df.gov.uk in order to be informed when application arrangements are released.

Train Operating Companies will be informed of any further arrangements for rail replacement services through the Rail Delivery Group.

Supporting services accessible to everyone

Twenty one years after PSVAR were introduced it cannot be right that disabled people still cannot travel as easily or confidently as non-disabled people, or without incurring additional cost. The exemptions we are offering are essential to enable vital services to run but they must not be used as a licence to discriminate. Train Operating Companies will still be expected to provide rail replacement services using compliant vehicles wherever possible, and I will write separately to the Rail Delivery Group specifying my continuing expectations of the rail industry and the requirements on them. Local authorities, schools and colleges must also take responsibility for procuring inclusive services. We will work with the Department for Education and the Devolved Administrations to inform commissioners of HTS services of our expectations, and to remind them of their legal equalities' duties, with which they remain responsible for complying with.

I know that you recently met with my officials and I understand that was a helpful and constructive meeting. I welcome the trade bodies' efforts to consider how bus and coach services can meet the needs of all their passengers including, for instance, taking proactive steps to investigate more inclusive approaches for providing step-free access to high-floor coaches. My officials stand ready to discuss the application of PSVAR with you further, and I hope that you will continue to work with us, helping your members to understand our expectations, harnessing their collective knowledge and expertise, and thinking creatively about solutions to the challenges that disabled people continue to face.

Breaking down the barriers that still prevent disabled people living the lives they want to is the duty of each of us, rather than someone else's problem – and we must all do our bit to provide transport that enables access and promotes independence, helping disabled people to fulfil their potential.

I trust I can rely on your support to make this happen.

Vere of Norbiton

BARONESS VERE OF NORBITON

Section 14. Sign off section

This full EIA was completed by:

Name: Andy Holmes
Job title: Service Improvement Officer
Directorate: BES
Signature: Andy Holmes

Completion date: 06 May 2020

Reviewed in August 2021 by

Name: Catherine Price
Job Title : Contract & Commissioning Manager
Directorate : BES

Authorised by relevant Assistant Director (signature): Ian Fielding

Date: 06 May 2020

Review Authorised by Assistant Director (signature) : Michael Leah
Date: 04 August 2021



Climate change impact assessment

The purpose of this assessment is to help us understand the likely impacts of our decisions on the environment of North Yorkshire and on our aspiration to achieve net carbon neutrality by 2030, or as close to that date as possible. The intention is to mitigate negative effects and identify projects which will have positive effects.

This document should be completed in consultation with the supporting guidance. The final document will be published as part of the decision making process and should be written in Plain English.

If you have any additional queries which are not covered by the guidance please email climatechange@northyorks.gov.uk

Please note: You may not need to undertake this assessment if your proposal will be subject to any of the following:

Planning Permission
Environmental Impact Assessment
Strategic Environmental Assessment

However, you will still need to summarise your findings in in the summary section of the form below.

Please contact climatechange@northyorks.gov.uk for advice.

Title of proposal	Continued Use of DfT PSVAR Exemptions on Home to School Transport Contracts
Brief description of proposal	To continue to use exemptions provided by DfT to allow the sale of spare seats to Non Entitled and Post 16 pupils on existing bus services provided as part of our statutory duty in relation to home to school transport
Directorate	Business and Environmental Services
Service area	IPT
Lead officer	Catherine Price
Names and roles of other people involved in carrying out the impact assessment	Catherine Price
Date impact assessment started	July 2021

Options appraisal

Were any other options considered in trying to achieve the aim of this project? If so, please give brief details and explain why alternative options were not progressed.

N/A

What impact will this proposal have on council budgets? Will it be cost neutral, have increased cost or reduce costs?

Please explain briefly why this will be the result, detailing estimated savings or costs where this is possible.

The continued use of the exemptions provided by the DfT in relation to PSVAR enables the Council to continue to sell bus passes to school pupils/student to enable them access their education during the 2021/22 academic year.

This will bring income to the Home to school transport budget for at least 2 terms (possibly 3 pending further advice in relation to exemptions from DfT expected in early 2022)

Whilst we do not yet know how many applications we will receive and be in a position to offer passes to the income received is expected to be in the region of
£350K

How will this proposal impact on the environment? N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.		Positive impact (Place a X in the box below where	No impact (Place a X in the box below where	Negative impact (Place a X in the box below where	Explain why will it have this effect and over what timescale? Where possible/relevant please include: <ul style="list-style-type: none"> • Changes over and above business as usual • Evidence or measurement of effect • Figures for CO₂e • Links to relevant documents 	Explain how you plan to mitigate any negative impacts.	Explain how you plan to improve any positive outcomes as far as possible.
Minimise greenhouse gas emissions e.g. reducing emissions from travel, increasing energy efficiencies etc.	Emissions from travel		X				
	Emissions from construction		X				
	Emissions from running of buildings		X				
	Other		X				
Minimise waste : Reduce, reuse, recycle and compost e.g. reducing use of single use plastic			X				
Reduce water consumption			X				
Minimise pollution (including air, land, water, light and noise)			X				

<p>How will this proposal impact on the environment?</p> <p>N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.</p>	<p>Positive impact (Place a X in the box below where</p>	<p>No impact (Place a X in the box below where</p>	<p>Negative impact (Place a X in the box below where</p>	<p>Explain why will it have this effect and over what timescale?</p> <p>Where possible/relevant please include:</p> <ul style="list-style-type: none"> • Changes over and above business as usual • Evidence or measurement of effect • Figures for CO₂e • Links to relevant documents 	<p>Explain how you plan to mitigate any negative impacts.</p>	<p>Explain how you plan to improve any positive outcomes as far as possible.</p>
<p>Ensure resilience to the effects of climate change e.g. reducing flood risk, mitigating effects of drier, hotter summers</p>		<p>X</p>				
<p>Enhance conservation and wildlife</p>		<p>X</p>				
<p>Safeguard the distinctive characteristics, features and special qualities of North Yorkshire's landscape</p>		<p>X</p>				
<p>Other (please state below)</p>		<p>X</p>				

Are there any recognised good practice environmental standards in relation to this proposal? If so, please detail how this proposal meets those standards.

N/A

Summary Summarise the findings of your impact assessment, including impacts, the recommendation in relation to addressing impacts, including any legal advice, and next steps. This summary should be used as part of the report to the decision maker.

The bus services that non entitled pupils will access as a result of this decision will be running regardless of the decision for entitled pupils who we have a statutory duty to provide transport for. It is considered a good use of resource to sell spare seats on these services than to force passengers to find an alternative way to travel which may result in many more vehicles on the road at school times each day.

Sign off section

This climate change impact assessment was completed by:

Name	Catherine Price
Job title	Contract and Commissioning Manager
Service area	Integrated Passenger Transport
Directorate	Business and Environmental Services
Signature	Catherine Price
Completion date	28 July 2021

Authorised by relevant Assistant Director (signature): Michael Leah, Assistant Director, Travel, Environmental and Countryside Services

Date: 4/8/2021