

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 20: Rail vehicle accessibility: compliance

927. The provisions of this Schedule are tied to those of section 186 which provides for the Schedule to be repealed if not brought into force (either fully or to any extent) by 31 December 2010.
928. This Schedule was included in the Act because, during its passage through Parliament, the Department for Transport was consulting on draft regulations under section 46 of the Disability Discrimination Act 1995. These were prepared following a policy reappraisal which favoured a move away from compliance certification and civil enforcement powers for rail vehicle accessibility. The Government's preferred option, adoption of Health and Safety at Work etc Act 1974 enforcement powers with the Office of Rail Regulation being designated as enforcement authority, would make accessibility enforcement on light rail consistent with recent changes to accessibility enforcement on the main line rail system resulting from the introduction of new European standards which came into force in July 2008. The consultation period ended on 3 July 2009 but, in order not to pre-empt the outcome, the option to use compliance certification and civil enforcement powers was retained in the Act.
929. Consultation responses indicated that the Government's preferred option of non-commencement of this Schedule was widely supported by stakeholders. The Government therefore proceeded with the implementation of a package of secondary legislation under the Disability Discrimination Act 1995 which did not include compliance certification and replaced the originally envisaged civil enforcement regime with enforcement by the Office of Rail Regulation under their existing Health and Safety at Work etc Act 1974 powers. The enforcement provisions were contained in the [Rail Vehicle Accessibility \(Non-Interoperable Rail System\) Regulations 2010 \(S.I. 2010/432\)](#) which came into force on 6 April 2010.
930. Government policy is therefore not to bring this Schedule into force. However, the provisions are still explained in detail below to assist the reader's understanding.

Paragraphs 1 to 4

931. These paragraphs introduce the concept of "compliance certification" into the rail vehicle accessibility regime. The effect would be to require prescribed rail vehicles to have a rail vehicle accessibility compliance certificate (which certifies compliance with accessibility standards).

Rail vehicle accessibility compliance certificates: [paragraph 1](#) Effect

932. This paragraph provides for the introduction of compliance certification into the rail vehicle accessibility regime by prohibiting a regulated rail vehicle from being used

in passenger service unless a valid compliance certificate has been issued for that rail vehicle. Regulations would be required to set out which rail vehicles would require a compliance certificate.

933. It also contains provisions to enable a penalty to be paid to the Secretary of State should a regulated rail vehicle, which is required to have a compliance certificate, be operated in passenger service without one.
934. In circumstances where the Secretary of State has refused to issue a compliance certificate, provisions are made for the applicant to ask for a review of that decision, within a maximum time period to be set in regulations, taking into account any written representations that may be presented by the applicant. A fee could be charged to recover the costs of undertaking such a review.

Background

935. This paragraph replicates the provisions of sections 47A and 47D of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Regulations as to compliance certificates: [paragraph 2](#)

Effect

936. This paragraph enables regulations to be made setting out how the compliance certification regime introduced by paragraph 1, would operate in practice. For example, the regulations could specify who may apply for a compliance certificate, the conditions to which they would be subject and the period for which the conditions would remain in force.

Background

937. This paragraph replicates some of the provisions of section 47B(1) to (3) of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Regulations as to compliance assessments: [paragraph 3](#)

Effect

938. This paragraph provides for regulations to be made for the undertaking of compliance assessments, including provision as to who may carry out assessments, and which may provide that assessments be carried out by persons appointed by the Secretary of State (to be known as an “appointed assessor”).
939. Sub-paragraph (3) enables regulations to make provision about the appointment of appointed assessors, for them to charge fees in connection with their work, to prescribe procedures and for the referral of disputes between an appointed assessor and a person who requested a compliance assessment.

Background

940. This paragraph replicates the remaining provisions of section 47B of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Fees in respect of compliance certificates: [paragraph 4](#)

Effect

941. This paragraph enables regulations to be made setting out the fees which the Secretary of State may charge to recover the costs of carrying out certain administrative tasks relating to the issuing of compliance certificates. Any fees which are received must be paid into the Consolidated Fund. Before making any regulations under this paragraph, the Secretary of State must consult representative organisations.

Background

942. This paragraph replicates the provisions of section 47C of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Paragraphs 5 to 12

943. Paragraphs 5 to 12 make provision for a civil enforcement regime which would enable penalties to be levied for non-compliance with rail vehicle accessibility regulations.

Penalty for using rail vehicle that does not conform with accessibility regulations: paragraph 5

Effect

944. This paragraph sets out the procedure to be followed by the Secretary of State in respect of an operator of a regulated rail vehicle which appears not to comply with the construction requirements of rail vehicle accessibility regulations. The procedure would involve the issue of “improvement” and “final” notices and, if the vehicle is used despite still being non-compliant with those elements of rail vehicle accessibility regulations with which it is required to conform, the Secretary of State could impose a penalty. The various timescales leading up to the imposition of the penalty would have to be set out in regulations.

Background

945. This paragraph replicates the provisions of section 47E of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Penalty for using rail vehicle otherwise than in conformity with accessibility regulations: paragraph 6

Effect

946. This paragraph makes similar provisions to paragraph 5 but in respect of vehicles used in a way which does not comply with the operational, rather than technical, requirements of accessibility regulations. For example, a regulated rail vehicle may have appropriate equipment to assist a disabled person in getting on or off the vehicle, such as a lift or ramp, but no member of staff is available to operate it.

Background

947. This paragraph replicates the provisions of section 47F of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Inspection of rail vehicles: paragraph 7

Effect

948. This paragraph sets out powers of inspection, to be available where the Secretary of State has reasonable grounds for suspecting that a regulated rail vehicle does not conform with those provisions of accessibility regulations with which it is required to conform. The paragraph also grants similar powers of inspection following the issuing of notices under paragraph 6. “Inspectors” would be empowered to examine and test such rail vehicles and to enter premises at which it is believed they are kept. If an inspector was intentionally obstructed in the exercise of these powers by an operator, or someone acting on the operator’s behalf, the Secretary of State could in certain circumstances impose a penalty on the operator.

Background

949. This paragraph replicates the provisions of section 47G of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Supplementary powers: paragraph 8

Effect

950. This paragraph would allow the Secretary of State to issue a notice to a rail vehicle operator requiring it to provide information by a specified deadline to enable a rail vehicle which is described in that notice to be identified. A penalty could be imposed on the recipient of such a notice if it fails to provide the information required by the deadline, which must be a minimum of 14 days from the date on which the notice was given.
951. Provision is also included to incentivise compliance with notices served under paragraphs 5 or 6 (notices requiring rail operators to make vehicles, or their use, compliant with accessibility regulations). Operators could be required to state what steps they are taking to comply with such notices.
952. In default of providing this information, the Secretary of State is empowered to proceed to the “further notice” stage under paragraphs 5 or 6, a precursor to charging a penalty for non-compliance.

Background

953. This paragraph replicates the provisions of section 47H of the Disability Discrimination Act 1995 as inserted by the Disability Discrimination Act 2005 but not yet in force.

Penalties: amount, due date and recovery: [paragraph 9](#)

Effect

954. This paragraph makes provision in relation to the amount, due date and recovery of penalties imposed under paragraphs 1 and 5 to 8. It stipulates that the maximum penalty cannot exceed the amount prescribed in regulations, or 10 per cent of the turnover of the rail vehicle operator subject to the penalty, whichever is the lesser amount. “Turnover” must be determined in accordance with provisions set out in regulations and the Secretary of State is able to take court proceedings to recover any penalty payable to him. All penalties must be paid into the Consolidated Fund.

Background

955. This paragraph replicates section 47J (1) to (7) of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force. The other aspects of section 47J are replicated at paragraph 10.

Penalties: code of practice: [paragraph 10](#)

Effect

956. This paragraph would require the Secretary of State to issue a code of practice to set out matters that must be considered in determining the level of a penalty. The Secretary of State would be required to take account of the code when imposing a penalty under this Schedule or in considering any objections received to the imposition of a penalty. A court must also take account of the code in considering an appeal against a penalty (see paragraph 12).
957. Before issuing either the first or a revised code of practice, the Secretary of State would have to lay a draft before Parliament, and could bring it into operation by order.

Background

958. This paragraph replicates the remaining provisions of section 47J of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Penalties: procedure: [paragraph 11](#)

Effect

959. This paragraph sets out the procedure for the imposition of penalties under this Schedule. In particular it specifies the information which the Secretary of State would have to provide when notifying a rail vehicle operator that it is liable to a penalty, and outlines the operator’s right to object to the imposition, or amount of, a penalty. Should

an objection be received, the Secretary of State would be under an obligation to consider the objection and take appropriate action.

Background

960. This paragraph replicates the provisions of section 47K of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Penalties: appeals: paragraph 12

Effect

961. This paragraph sets out the right of an operator, on whom a penalty has been imposed, to appeal to a court on the grounds that either it is not liable to a penalty, or that the amount is too high. An appeal under this section is a re-hearing of the Secretary of State's original decision to impose a penalty, and may be brought whether or not the operator has given a notice of objection (under paragraph 11), or the Secretary of State has already reduced a penalty.

Background

962. This paragraph replicates the provisions of section 47L of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Forgery, etc.: paragraph 13

Effect

963. This paragraph would make it a criminal offence for a person, with intent to deceive, to forge, alter, use, or lend a compliance certificate, to allow one to be used by another person, to make or have possession of a document which closely resembles one, or to knowingly make a false statement for the purpose of obtaining one.
964. It would also make it a criminal offence for a person, with intent to deceive, to impersonate an inspector authorised by the Secretary of State under paragraph 7.

Background

965. This paragraph replicates elements of the provisions of section 49 of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.

Regulations: paragraph 14

966. This paragraph provides that any power to make regulations provided for in the Schedule is exercisable by the Secretary of State.

Interpretation: paragraph 15

Effect

967. This paragraph defines what is meant by the terms "compliance assessment", "compliance certificate" and "operator" in relation to this Schedule.
968. Under sub-paragraph (2), if a rail vehicle to which this Schedule applies is the subject of an exemption order issued under section 183, then a reference in this Schedule to a rail vehicle accessibility requirement would not include a requirement from which that vehicle is exempt.

Background

969. This paragraph replicates elements of the provisions of section 47M of the Disability Discrimination Act 1995 inserted by the Disability Discrimination Act 2005 but not yet in force.