

**EXPLANATORY MEMORANDUM TO
THE RAIL VEHICLE ACCESSIBILITY (VIRGIN WEST COAST CLASS 390)
EXEMPTION ORDER 2005**

2005 No.329

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order exempts certain specified rail vehicles, which have been built for use by Virgin West Coast Trains Ltd, from a requirement of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The Order imposes a condition and sets an expiry date.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 46 of the Disability Discrimination Act 1995 (“the DDA”) empowers the Secretary of State to make rail vehicle accessibility regulations (“RVAR”) to ensure that it is possible for disabled persons, including wheelchair users, to travel in safety and reasonable comfort in those vehicles to which the regulations apply. The regulations, which were made in 1998 and amended in 2000, apply to rail vehicles designed or adapted for passenger use, and first brought into use after 31st December 1998.

4.2 Section 47 of the DDA enables the Secretary of State, on receipt of an application for exemption from particular requirements of the RVAR, to make Orders authorising specified regulated rail vehicles to be used in passenger service even though they do not conform to all of the requirements of the RVAR. Such Orders may contain conditions and set time limits.

4.3 These vehicles entered service in 2002, and at that time were granted exemptions from three of the requirements of the RVAR (see S.I. 2002/1699). However, an application for a further exemption has now been made because modifications to the vehicles mean that they do not comply with another requirement of the RVAR. Because some of the provisions of the original Order are now spent, the Department has decided that, rather than simply amending the original Order to add in the new exemption, it would be preferable to consolidate it. Therefore, the exemptions granted by articles 4 and 5 in this Order, and the conditions and expiry dates that attach to them, were granted in 2002, save that an additional condition has been added to the exemption from regulation 12 (see article 6(2)(b)) due to an oversight at the time the original exemption was granted.

4.4 An exemption from regulation 12 was originally sought because the door of the refrigerator in the shop area required a force of 25 newtons to open it, rendering it non-compliant with the requirement that door handles fitted for the use of passengers must be operable using a force not exceeding 15 newtons. However, there are safety concerns in having a compliant door in this instance as, unless the door has strong retention, there is a danger that it could accidentally open and injure someone passing by. The exemption was therefore granted but on condition that the force required to open it did not exceed 25 newtons. The new condition added to this Order is that the operator must provide, on request, assistance to any person having difficulty operating the door handle. This will ensure that the operator has someone available at all times to offer assistance.

4.5 The other existing exemption relates to regulation 18(4) and concerns the requirement for the lowest point on the underside of a table to be not less than 720mm from the floor of the vehicle. In this case an adjustable table was fitted, the height of which can be adjusted to levels of between 680mm and 760mm. Therefore, when fixed at the lowest levels, the table is non-compliant with the requirement. However, this adjustable table provides an enhanced facility for all passengers, including disabled people, who can fix the table at the height most comfortable to them. The exemption was therefore granted but with conditions that the operator must make someone available on request to adjust the table height, and that a sign is provided indicating that this service is available on request to a member of the train crew.

4.6 The application for the additional exemption was made because further modifications mean that the vehicles do not now comply with the requirement that the floor of the vestibule and the floor of the adjacent saloon must achieve a dark/light contrast. In this particular case, the carpets that Virgin is currently using are subject to heavy staining around the passenger door areas. This is more pronounced with the existing lighter coloured carpets, and looks very unsightly. They have been unable to find a solution to the staining problem and have concluded that the only solution is to provide a darker coloured carpet. The company therefore wishes to replace the existing carpets with two dark ones, which are different in colour, but which do not offer a contrast that would render them RVAR compliant. One of the key factors in favour of the exemption being granted, however, is that the vestibule and saloon are separated by a door which helps to break up the two surfaces. We believe this achieves the policy objective of assisting partially sighted people find the external doorway area. A similar exemption was granted to Virgin last year in respect of their Class 220 and 221 vehicles (SI No. 955/2004).

4.7 A copy of Virgin's application and a photograph showing the effect the door has on breaking up the two surfaces is attached to this Memorandum at Annexes B and C. For information, the Committee will be interested to learn that we are currently undertaking a research project to look into the effective use of contrast in rail vehicles for the assistance of disabled people. The findings of this research will help inform our decision on whether to make future amendments to the RVAR, one of which is likely to result in a proposal for the removal of the requirement for the floor of the vestibule and saloon to contrast when they are separated by a door.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The policy objectives of the parent Act are to ensure that all rail vehicles first brought into use after a certain date are designed in accordance with the specific requirements of the RVAR, so as to enable disabled persons to travel in them in comfort and safety. However, the Act provides the Secretary of State with a power to exempt specified vehicles from particular requirements, on application by the operator, where he is satisfied that it is not possible for the vehicles to comply fully with the Regulations, and where this failure will not seriously compromise the ability of disabled persons to travel in the vehicles. Each application is considered on a case by case basis. The main purpose of this particular RVAR requirement is to enable partially sighted passengers to navigate their way around the vehicle, and to ensure that they know when they are in the vestibule area, where the external doors are. The fact that an internal door separates the two non-compliant floor surfaces means that this policy objective is addressed, and this is a significant fact in favour of the exemption being granted. To ensure that this mitigating feature remains, the siting of an internal door between the vestibule and saloon areas has been made a condition of the exemption. On this basis, and because the potential impact on disabled users of the vehicles will be negligible, the Secretary of State has decided to grant the application.

7.2 Section 47(3) of the DDA requires the Secretary of State, as part of the consideration of an application for exemption, to consult the Disabled Persons Transport Advisory Committee (“DPTAC”), together with any other appropriate persons. The DPTAC was established under section 125 of the Transport Act 1985 to advise the Government on transport policy as it affects the mobility of disabled people. The DPTAC has been consulted on this application, and supplied comments, a copy of which is attached to this Memorandum at Annex A. Whilst appreciating the problems Virgin are experiencing with carpet staining, the DPTAC only recommended a 10 year exemption, as opposed to the life of vehicle exemption requested by the train operating company. 10 years is the expected life of the carpets and during this time the DPTAC would expect Virgin to have found a suitable solution to the staining problem. We have, however, recommended reducing this slightly to end May 2012 to bring the expiry date in line with the existing exemptions on the Order. We have also consulted Her Majesty's Railway Inspectorate (HMRI), the Strategic Rail Authority and the Office of Rail Regulation. Having taken the comments made by the consultees into account, the Secretary of State has decided to grant the exemption for the period stated in the Order.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

Peter Colmans at the Department for Transport, Tel: 020 7944 4916 or e-mail Peter.colmans@dft.gsi.gov.uk, can answer any queries regarding the instrument.

Annex A

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Disabled Persons Transport Advisory
Committee

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15 July 2004

Peter Colmans
DfT Mobility and Inclusion Unit
1/18 Great Minster House
76 Marsham Street
London
SW1P 4DR

Dear Peter

**Disability Discrimination Act 1995
Rail Vehicle Accessibility Regulations 1998
Application for Exemption by Virgin West Coast Trains Ltd**

Thank you for seeking DPTAC's advice on this application for exemption under Section 47(3) of the Disability Discrimination Act 1995.

Virgin West Coast Trains Ltd were seeking an exemption from regulation 7(b) in regards to their Class 390 vehicles.

In making our recommendations, DPTAC have considered the applications in terms of their implications and effect on disabled passengers.

We have not necessarily taken any financial, technical or operational issues into account. We accept that the Mobility and Inclusion Unit of DfT, after consultation with other relevant bodies, will include these wider considerations when making their recommendation to the Secretary of State.

DPTAC's views are set out in Annex A.

Yours sincerely

Ffion Grant
DPTAC Secretariat

RVAR Exemption Application
[Virgin] West Coast Trains Ltd
Class 390

Considered July 2004

Regulation Clause Number

7(b)

Regulation

7. The floors of areas used by passengers in a regulated rail vehicle shall comply with the following requirements:

(b) the floor of a vestibule adjoining a doorway in the side of a vehicle shall contrast with the adjacent floor in the passenger saloon of that vehicle;

Period Sought

Permanent

DPTAC Recommendation

When considering this exemption, DPTAC felt it important to remember that the intention of this particular regulation is to give clear visual information to passengers by defining distinct areas of the vehicle. In this

particular instance, this is effectively done by the existence of a door between the vestibule and passenger saloon.

DPTAC are aware of the extensive and unsightly staining that Virgin are experiencing with their current carpets. DPTAC understands that this staining problem at the vehicles entry points will have a detrimental effect on the travel experience of all passengers. This is especially relevant in relation to spillage from adjacent toilet units. DPTAC welcome Virgin's efforts to improve this situation but are disappointed that they have been unable to find a compliant solution.

Therefore DPTAC recommend that this exemption should be granted for the life of the carpet (this is estimated at 10 years). During this time DPTAC would expect Virgin to investigate and source appropriate and compliant carpets, able to withstand the rigorous use it receives in these conditions.

DPTAC would also expect that by the time these carpets need to be replaced, this will be covered by the excepted Refurbishment Regulations.

If granted DPTAC recommend that this exemption should only remain valid for Class 390 vehicles, as specified in the application, when operated by Virgin West Coast Trains Ltd on this service.

This recommendation is consistent with that made by DPTAC in response to a similar application from Virgin Cross Country Ltd in regards to their Class 220 & 221 vehicles.

Annex B

1	Applicant.	<p>West Coast Trains Limited. Whose registered office is at: 120 Campden Hill Road, London. W8 7AR.</p> <p>Registered in England & Wales No. 3007940.</p> <p>The relevant Director, and contact address is:</p> <p>Richard Shotton Director, Safety and Quality Meridian 85 Smallbrook Queensway Birmingham B5 4HA.</p>
2	Description of Rail Vehicles.	<p>Class 390 - Electric Multiple Units,</p> <p>Train numbers affected: 390001 – 390053</p> <p>Vehicle numbers affected: 68801 – 68853 69101 – 69153 69201 – 69253 69401 – 69453 69501 – 69553 69601 – 69653 69701 – 69753 69801 – 69853 69901 – 69953</p>
3	Circumstances in which the exemption is to apply.	At all times in passenger service.
4	Relevant requirement from which exemption is sought.	Regulation 7(b): the floor of a vestibule adjoining a doorway in the side of a vehicle shall contrast with the adjacent floor in the passenger saloon of that vehicle.
5	Technical, economic and operational reasons why exemption is sought.	<p>The existing carpets in the vestibules have poor resistance to staining. Virgin Trains have tried different methods to reduce the level of unsightly stains but have concluded the only effective course of action is to change to a darker coloured carpet.</p> <p>The two attached photographs show the difference in colour between the existing vestibule carpet and new darker coloured carpet.</p> <p>The <u>contrast</u> between the darker vestibule carpet and the existing saloon carpet will be less than the carpets presently fitted to Class 390s. To visualise the degree of contrast, the darker carpets have</p>

		<p>been fitted to all 78 Class 22x trains operated by Virgin Cross Country. John Adey viewed the trial Class 22x train and has not raised any issues. The carpets fitted to the Class 390 are identical to those in the Class 22x fleet. A detail difference between the Class 390 & 22x fleet is that the 390's do not have a strip between the interior door jambs, such that the two carpet types are butted up to each other.</p> <p>We therefore request an exemption against Regulation 7(b) in order to use the darker carpet on all vestibule floors. To summarise the main benefit; this will minimise unsightly stains being viewed by passengers and therefore provide a warm and welcoming environment for our customers boarding, leaving and walking through the train.</p>
6	The effect which non-compliance would have on a disabled person's ability to use rail vehicles of the description to which the application relates.	Although the contrast between the vestibule carpet and saloon carpet will be less than we have presently on Class 390s, we believe there will be minimal effect to disabled person's ability to move through the train. We therefore consider the change to be acceptable.
7	Any measures which could be taken to enable disabled persons to use the rail vehicle if exemption sought is granted.	No measures required since there will be a minimal effect to disabled person's ability to move through the train.
8	Any proposals for later modification of rail vehicles to secure compliance with RVAR within a stated period.	None.
9	Period of exemption sought.	Permanent exemption required.

Annex C

