

EXPLANATORY MEMORANDUM TO
THE RAIL VEHICLE ACCESSIBILITY
(APPLICATIONS FOR EXEMPTION ORDERS)
REGULATIONS 2010

2010 No. 427

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

2. Purpose of the Instrument

2.1 The Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010 ("the Regulations") set out administrative requirements in relation to the making of an application to the Secretary of State for the grant of an exemption, by order, from a requirement to comply with technical standards set out in any "rail vehicle accessibility regulations" made under section 46 of the Disability Discrimination Act 1995 ("DDA 95"). These standards are designed to make passenger vehicles used on light rail systems (metro, underground, tramways and prescribed modes of guided transport) more accessible to disabled people.

2.2 The Regulations make provision with regard to who may apply for an exemption order and what information must be supplied with an application.

2.3 The Regulations revoke and replace the Rail Vehicle (Exemption Applications) Regulations 1998¹.

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

3.1 None.

4. Legislative Context

4.1 Following the enactment of the DDA 95, the first set of rail vehicle accessibility regulations under section 46 of that Act was introduced in 1998. Section 47 of the DDA 95 empowers the Secretary of State to grant exemptions from the provisions of rail vehicle accessibility regulations by order and regulations specifying who might apply for an exemption order and the information to be supplied with an application were also introduced in 1998.

4.2 A review of the existing regulations has been conducted as part of a wider reassessment of the operation of the DDA 95 rail vehicle accessibility regime. As a result, the Government has decided to revoke and replace both sets of regulations with updated and adjusted provisions to take account of experience of operating under the previous regime for over a decade and significant legislative changes since 1998.

¹ S.I 1998/2457.

These have included the introduction of European passenger rail vehicle accessibility standards for the main line railway (trains), which came into force in July 2008. The latter has acted to reduce the scope of the DDA 95 rail vehicle accessibility regime to light rail vehicles only.

4.3 The Government has looked again at the requirements which apply in relation to the making of applications for the grant of exemptions and the Regulations are the result.

4.4 Related statutory instruments are the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (which set the technical accessibility standards for light rail vehicles and will revoke and replace existing rail vehicle accessibility regulations introduced under section 46 in 1998), the Rail Vehicle Accessibility (Networks) Exemption Order 2010 (which provides for exemption of heritage and tourist networks, and certain miscellaneous networks, from the need to comply with accessibility regulations) and the Disability Discrimination Act 2005 (Commencement No. 4) Order 2010 which brings into force certain amendments to the DDA 1995 made by the Disability Discrimination Act 2005 ("DDA 05") of most relevance being the change in the definition of "rail vehicle" in section 46 DDA 95 to restrict it to light rail vehicles but extend it to include pre-1999 vehicles.

4.5 The Equality Bill ("the Bill") currently proceeding through Parliament would, on Royal Assent, repeal and replace the DDA 95. The Bill re-states the provisions of the Act relating to rail vehicle accessibility without substantive amendment. It was introduced in the House of Commons in April 2009 at the same time as the Department was consulting on a draft of the Regulations. If the Bill is enacted, any commencement order to bring its rail vehicle accessibility provisions into force would provide for the Regulations to continue in force as if made under the new Act's powers.

5. Territorial Extent and Application

5.1 The Regulations apply to Great Britain.

5.2. Northern Ireland has its own equivalent rail vehicle accessibility legislation.

6. European Convention on Human Rights

6.1 As the Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why?*

7.1 The Regulations provide for two matters: who may apply for an exemption order and what information must be supplied with any such application, for example details of the technical, operational and economic reasons for the application, the likely impact that any non-compliance will have on the ability of a disabled passenger to travel on the rail vehicle(s) in safety and reasonable comfort and the time period for which an exemption is sought.

7.2 Whilst many requirements remain the same as in the revoked (1998) regulations, a number of changes have been made. These are designed to:

- clarify and extend the category of persons who may apply for an exemption order for a light rail vehicle so as to include light rail vehicle operators, owners and relevant lessees;
- make provision for applications to exempt light rail networks, as opposed to a vehicle-specific application;
- improve the list of information which must be provided with an application in relation to a light rail vehicle; and
- list the information which must be provided with an application in relation to a light rail network.

7.3 Under the operation of the previous regulations, only operators of rail vehicles were allowed to apply for an exemption order. In recognition of the changes which have occurred within the light rail industry, and the often complex operating and governance structures which are in place, consideration has been given to the desirability of extending the category of persons able to apply to owners and lessees of light rail vehicles. This would allow an owner to apply for an exemption for a whole fleet of vehicles, used by different operators, where a common non-compliance occurred. At present, this would require an application from each individual operator involved for the same issue on identical vehicles. This extension will therefore help to avoid multiple applications, so reducing the administrative burden on industry and Government.

7.4 Changes made to the DDA 95 by the DDA 05 now permit an exemption to be granted for a whole railway network (previously only vehicle-specific exemption orders were available). Since the information required in an application for a network exemption differs from that which would be required in a vehicle application an additional Schedule, i.e. Schedule 2, has been added to the Regulations to prescribe the information which must be supplied.

7.5 The revised list of information required with applications for vehicles has been developed to assist applicants in preparing their submissions by providing more clarity on what information is required for an application. The list reflects experience and should assist in minimising any possible delay resulting from a need to request additional information once an application is submitted. An example of such clarification is the expansion of the requirement to supply a "description of the rail vehicle" such as to include vehicle class, unit and number, the name and place of manufacture.

7.6 Provision in the revoked regulations to empower the Secretary of State to revoke an exemption order administratively by notice have not been repeated in the Regulations. This is because termination of an exemption is effected in practice by effluxion of time or

a negative resolution procedure statutory instrument.

- ***Consolidation***

7.7 As the Regulations do not amend other regulations, no consolidation is necessary.

8. Consultation Outcome

8.1 A twelve week consultation exercise on a draft of the Regulations was completed on 3 July 2009 as part of a broader consultation exercise on revisions to the rail vehicle accessibility regime². The consultation paper was distributed to over 450 stakeholders. 41 responses were received of which 32 (78 per cent) were from the railway industry, 6 (15 per cent) from organisations for, or representing, disabled people and 3 (7 per cent) from government or other organisations.

8.2 The consultation paper highlighted the small number of amendments proposed to the extant regulations as a result of legislative changes to other aspects of the rail vehicle accessibility regime and in the light of experience of operating the regime for over a decade.

8.3 Although comments on any aspect of the Regulations were invited, the consultation asked only one specific question which is reproduced in bold below together with a summary of the replies received and the Government's response to them.

Question: Do you agree that the owners or lessees of rail vehicles, in addition to operators, should be eligible to apply for an exemption order in their own right?

8.4 Only a small number of responses were received to this question and a majority of these indicated strong support for the revised provisions. However, two replies, both from operators of rail vehicles, indicated that they would prefer the ability to apply for an exemption order to remain restricted to operators only, as they are the persons to whom the legal duty to comply with rail vehicle accessibility regulations applies. However, both also indicated they would accept the proposals if the Regulations were amended to ensure that applications from owners or lessees were accompanied by evidence of consultation with the operator (if a different person).

8.5 The Government believes that this requirement is reasonable and a new paragraph 3(2) has been added to the Regulations together with a consequential addition to Schedule 1 (paragraph (k)), to ensure that evidence of consultation with the operator is supplied with any application for an exemption order where appropriate.

8.6 The Regulations also prescribe the information which will need to be supplied with applications for a network exemption order (Schedule 2). These were specifically highlighted with the operators of heritage and tourist networks, as the sector most likely to make applications for such orders, during a separate, concurrent, consultation

² See www.dft.gov.uk/consultations.

exercise³. No comments were received from stakeholders on this issue, suggesting that they were content.

9. Guidance

9.1 Guidance on the exemption application process is contained in the Department for Transport's "Rail Vehicle Accessibility Regulations - Guidance" publication⁴. Additional guidance is also available on the Department for Transport's web site⁵ where all applications for an exemption order are posted together with the outcome.

9.2 As a result of changes to rail vehicle accessibility standards, which will come into force at the same time as the Regulations, the Department for Transport intends to update its guidance and will publish revised material following further consultation.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as the Regulations represent only a fairly minor refinement and update of regulations which have been in place since 1998. No additional costs on these sectors is therefore foreseen.

10.2 The impact on the public sector is also expected to be negligible.

10.3 An impact assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business in that it is open to heritage and tourist railway and tramway operators to apply for an exemption order.

11.2 The Regulations are expected to reduce administrative burdens for these operators by allowing them to apply for a single exemption, where appropriate, for all rail vehicles in operation on their networks rather than individual, vehicle-specific, exemptions which were required previously. Due to their nature, the Regulations are not expected to impose any additional costs.

12. Monitoring & review

12.1 The Regulations are a part of the regulatory framework for improving the accessibility of light rail. The Government will keep this regulatory framework under on-going review through regular working contact with the light rail industry and in consultation with the Office of Rail Regulation. It is envisaged that the Equality and Human Rights Commission, as part of its overall duty to monitor the effectiveness of equalities legislation, will also keep it under review. The Disabled Persons Transport Advisory Committee, as the Government's statutory advisers on the public passenger

³ See www.dft.gov.uk/consultations.

⁴ See www.dft.gov.uk/transportforyou/access/rail/vehicles/pubs/rva/rvareg1998.

⁵ See www.dft.gov.uk/transportforyou/access/rail/vehicles/eo.

transport needs of disabled people, will also continue to advise on the effectiveness of the light rail vehicle accessibility regime.

13. Contact

Christopher Angell at the Department for Transport (Tel: 020 7944 0082 or e-mail: christopher.angell@dft.gsi.gov.uk) can answer any queries regarding the Regulations.