

EXPLANATORY MEMORANDUM TO
THE RAIL VEHICLE ACCESSIBILITY (B2007 VEHICLES) EXEMPTION ORDER
2015

2015 No. 1631

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 The Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2015 (the “Order”) exempts specified rail vehicles operated by Docklands Light Railway (“DLR”) from one requirement, relating to the use of boarding devices, under the Rail Vehicle Accessibility (Non-Interoperable Rail Systems) Regulations 2010¹ (the “RVAR 2010”), at certain stations on the DLR network. This is explained in further detail in paragraphs 7.2 to 7.10.

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

3.1 Section 184(1) of the Equality Act 2010 (the “EA 2010”) provides that an exemption order, such as this, may be made using either the draft affirmative or negative resolution procedure. In accordance with section 184(3) of the EA 2010 the Secretary of State can only make an order using the negative procedure when regulations setting out the basis on which the Secretary of State will decide which procedure to use are in force and the making of the order using the negative procedure is in accordance with those regulations.

3.2 The relevant regulations are the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008² (the “2008 Regulations”) ³. Under the 2008 Regulations, where none of the circumstances set out in regulation 2(3) apply, as in this instance, orders exempting rail vehicles would normally be subject to the draft affirmative resolution procedure. However, regulation 5(2) of the 2008 Regulations enables the Secretary of State, having regard to the particular circumstances and representations made by the Disabled Persons Transport Advisory Committee⁴ (“DPTAC”), to elect to make orders which would otherwise be subject to the draft affirmative procedure, using the negative resolution procedure instead.

¹ S.I. 2010/432.

² S.I. 2008/2975, see in particular regulation 5.

³ Although made under the DDA 1995, which has been repealed, the 2008 Regulations now have effect as though made under sections 184 of the EA 2010, by virtue of article 21 of, and Schedule 7 to, the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (the “Commencement No. 4 Order”), S.I. 2010/2317.

⁴ DPTAC was established under section 125 of the Transport Act 1985 to advise the Government on the public passenger transport needs of disabled people.

3.3 The Secretary of State consulted DPTAC on the use of the negative resolution procedure. This was because an equivalent exemption, relating to the use of boarding devices at a number of platforms on the DLR network, had been approved under the draft affirmative resolution procedure in 2008. In light of this, DPTAC was content with the use of the negative resolution procedure in this instance. The Secretary of State has therefore decided to use this discretion and to allow this Order to be made using the negative resolution procedure.

3.4 As of 1st October 2015 it will no longer be a requirement that an exemption order be made by statutory instrument. From this date exemption orders will be made administratively, although it will still be necessary for the Department to consult DPTAC and any appropriate parties, for a Minister to sign the order, and for details of the use of exemption powers to be laid before Parliament in an annual report. These changes are the result of amendments to the EA 2010 brought about by Part 7 of Schedule 10 to the Deregulation Act 2015 which will be commenced on 1st October 2015⁵.

4. Legislative Context

4.1 Section 46 of the DDA 1995, now replaced by section 182 of the EA 2010, enabled the Secretary of State to make rail vehicle accessibility regulations for the benefit of disabled rail passengers. Using this power the Secretary of State made the Rail Vehicle Accessibility Regulations 1998⁶ (the “RVAR 1998”).

4.2 In 2010 the RVAR 1998 were revoked by the RVAR 2010. The RVAR 2010 applied similar accessibility requirements which were updated in light of experience and progress in technology⁷.

4.3 Section 47 of the DDA (now section 183 of the EA 2010) enabled the Secretary of State to exempt certain rail vehicles by Order from the requirements of rail vehicle accessibility regulations. In accordance with section 47 of the DDA and now section 183 of the EA 2010, exemption orders can include conditions and restrictions. A number of such orders have been made since 1998.

4.4 An order exempting DLR from the requirement of the RVAR 1998 relating to boarding-devices came into force on 31st March 2008 in respect of 28 stations on the DLR network (the “2008 Order”, see paragraph 7.5 below). The exemption expired on 31st December 2014. The 2008 Order made a number of other exemptions from RVAR requirements, of which, 3 remain in force and are due to expire on 31st December 2016⁸.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

⁵ The commencement provisions can be found in article 11(p) of the Deregulation Act 2015 (Commencement No. 1 and Transitional and Savings Provisions) Order 2015, S.I. 2015/994.

⁶ S.I. 1998/2456.

⁷ Following the repeal of the DDA 1995, the RVAR 2010 continue to have effect as if made under sections 182 and 207 of the EA 2010 by virtue of article 21(1) of, and Schedule 7 to, the Commencement No. 4 Order.

⁸ Although made under the DDA 1995 which has since been revoked, the 2008 Order continues to have effect by virtue of article 21(1) of, and Schedule 7 to, the Commencement No. 4 Order.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective of the rail accessibility provisions of the EA 2010 is to ensure certain accessibility standards apply to passenger rail vehicles for the benefit of disabled people. Broadly, passenger vehicles brought into use on light railway and tram systems after 31st December 1998 must meet these requirements. All such vehicles will be required to comply with certain requirements by 1st January 2020, unless an exemption is in place. Where applications are received for exemption from RVAR 2010 requirements, each is considered on a case by case basis.

7.2 In this instance, DLR is seeking an exemption from the RVAR 2010 requirement that, if the gap between the floor of the rail vehicle and the platform is either more than 75 millimetres when measured horizontally, or more than 50 millimetres when measured vertically, a boarding device (lift or ramp) must be fitted by an operator if a person in a wheelchair wishes to use the doorway. The exemption is requested in respect of 27 stations at which the gaps exceed either the horizontal measurement, or both the horizontal and vertical measurements⁹.

7.3 The DLR network presents particular challenges because it was designed to have minimal steps between the carriage floor and platform. As a result DLR have to ensure that in reducing the gaps between vehicle and platform in order to comply with RVAR 2010 requirements they are not creating a risk of collision between vehicle and platform. Such a collision occurred in 2007 and led to a major overhaul of engineering standards within DLR.

7.4 DLR has considered the use of boarding devices in the past, but infrastructure constraints, the intensity of the service and the staffing model employed by DLR make this impractical, as it would present a hazard on the narrow platforms, impact on the time during which the vehicle is in the station (and therefore the overall service), and would increase staffing levels.

7.5 In line with the introduction of the B2007 vehicles to which this Order relates, in 2007 DLR applied for an exemption order in respect of the stations where the gaps between vehicles and platform would otherwise require the use of a boarding device under the RVAR 1998. The exemption was granted in the Rail Vehicle (B2007 Vehicles) Exemption Order 2008¹⁰. Although it expired on 31st December 2014 DLR did not submit their application for a new exemption until several months after this date.

7.6 DLR's application advises that the proposed rectification plan prepared around the time of the 2008 Order was unsuccessful. As a result a new three-phase programme has been put in place. As part of this programme DLR has reviewed operational safety performance data since 2010 and found that the risk of an incident at the interface

⁹ A copy of DLR's application can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413025/Docklands_Light_Railway_Exemption_Application.pdf.

¹⁰ S.I. 2008/925.

between vehicle and platform is very similar as between those stations where the horizontal gap is less than or equal to 75 millimetres (where a boarding device would not be required under the RVAR 2010) and those where the gap exceeds 75 mm but is not more than 85 millimetres. This review is set out at Appendix 2 of their application. DLR also undertook wheelchair user trials with a number of disability groups, the full results of which can be found at Appendix 3 of their application. During the trial the wheelchair users experienced no problems at the stations where the gaps were not compliant with the RVAR 2010.

7.7 DLR's conclusion following this research was that, at the stations listed in the Schedule to the Order, a gap of more than 75 millimetres, but not more than 85 millimetres, is necessary if passenger safety is to be maintained and the risk of vehicle/platform collision curtailed.

7.8 DLR proposes to undertake works to reduce the gaps to not more than 85 millimetres in three phases – by 31st December 2016, 31st December 2017 (at stations where Crossrail works mean that the reduction cannot be safely achieved until the stations have stopped settling) and by 31st December 2017 (at stations where gap fillers will reduce the gap whilst preventing collision between train and platform). In the interim period DLR will install “Mind the Gap” platform markings at wheelchair-compatible doorways and will modify Passenger Service Agent announcement scripts to include a warning at all platforms.

7.9 Following consideration of the evidence and proposals set out in DLR's application the Secretary of State has decided to grant the exemption for a period of 10 years. This period will help to ensure that DLR focus on continuous improvement and continue to seek ways to address the gaps issue whilst still maintaining a safe railway.

7.10 The exemption has been granted on the condition that the horizontal gap is not more than 85 millimetres and on the condition that the vertical gap is not more than 50 millimetres. The stations at which these conditions apply as soon as the Order comes into force are listed in Table 1 of the Schedule to the Order. In respect of the stations in Table 2, at which the horizontal gaps are currently greater than 85 millimetres, and at which DLR proposes to have reduced the horizontal gaps to not more than 85 millimetres by a specified date, the condition relating to the horizontal gap does not apply until that date. In respect of the stations in Table 3, at which the horizontal gaps are currently greater than 85 millimetres and the vertical gaps greater than 50 millimetres, the conditions do not apply until the date indicated, these being the dates by which DLR propose to have reduced both the horizontal and vertical gaps.

7.11 This Order has been made as a stand-alone exemption order. The 2008 Order made reference to provisions of the RVAR 1998 which have now been repealed by equivalent provisions of the RVAR 2010. In view of this it was considered that it would be inappropriate and potentially legally uncertain simply to amend the 2008 Order. It was also considered important to make this Order as soon as possible, in light of DLR's ongoing non-compliance. Consideration will be given to consolidating all exemptions for the DLR B2007 fleet when a suitable opportunity arises¹¹.

¹¹ It will be possible to do this after the changes brought about by the Deregulation Act 2015 because they provide that an order made before 1 October 2015 will be treated as having been made other than by statutory instrument, but will be as capable of being amended or revoked as an order made by statutory instrument.

8 Consultation Outcome

8.1 Section 183(4) of the EA 2010 requires the Secretary of State, as part of the consideration of an application for exemption, to consult DPTAC together with any other appropriate persons. DPTAC has been consulted on this application. Their full response can be found at Appendix A. The Office of Rail and Road¹² and London TravelWatch (LTW) were also consulted. Their comments can be found at Appendices B and C, respectively. The application was also posted on the Department's website.

8.2 In summary, the comments received were generally sympathetic to the system constraints under which DLR operate and noted DLR's efforts to reduce the gaps between the platform and train in order to allow wheelchair users to access and use the DLR. LTW expressed concern that an untimed exemption order, sought by DLR in respect of certain stations, would not drive continuous improvement. Otherwise the consultees supported the making of an exemption order.

8.3 Several months after submission of their application, DLR requested that the dates by which they propose to have reduced the gaps between vehicle and platform edge be extended by 12 months. The Department consulted on this request and received responses from all three consultees, none of which raised objections to the 12 month extension. These responses can be found at Appendix D.

9. Guidance

9.1 Guidance relating to the RVAR 2010 and exemption orders can be found on the Department's website¹³.

10. Impact

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

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 This Order does not apply to any small business.

12. Monitoring and Review

12.1 The Government's policy objective is to ensure that the number of exemptions is minimised and that new and refurbished rail vehicles are as compliant as possible within the requirements of the RVAR 2010.

12.2 Within 5 years of the Order coming into force the Secretary of State must review the articles setting out the exemption, conditions and the expiry date and publish a report which assesses whether the objectives of these articles have been achieved and remain

¹² The Office of Rail and Road was formally known as the Office of Rail Regulation. Although the ORR are using the new name publicly, a statutory instrument under the Infrastructure Act 2015 formally to change their name has not yet been made.

¹³ <https://www.gov.uk/government/collections/rail-vehicle-accessibility-regulations-rvar-exemption-orders>.

appropriate. Following the review the Secretary of State will consider whether the Order should remain as it is or be amended or revoked.

12.3 The ORR is the enforcement body for the RVAR 2010 and is responsible for ensuring that all of DLR's rail vehicles comply with accessibility requirements to the extent permitted by this, and other, Orders.

13. Contact

Peter Fullerton at the Department of Transport: Tel: 020 7944 2481 or e-mail: peter.fullerton@dft.gsi.gov.uk can answer any queries regarding the instrument.

Appendix A



Phil Pool
Secretary
Disabled Persons Transport Advisory Committee
2/23 Great Minster House
76 Marsham Street
London
SW1P 4DR
Telephone: 020 7944 6441

11 June 2015

Mr Peter Fullerton
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Dear Peter

Application for a phased exemption from the requirements of the RVAR Schedule 1, Part 1, Paragraph 1 for Docklands Light Railway B2007 Stock, vehicle numbers 101-155 inclusive.

Thank you for your request for DPTAC to consider DLR's application.

DPTAC support the application as made and the use of use of the negative resolution procedure.

Yours sincerely,

Phil Pool
Secretary DPTAC

Appendix B

Dear Peter,

Thank you for the opportunity to comment on DLR's application for an exemption from Schedule 1, Part 1, Paragraph 1 of *The Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010* (RVAR). Granting the exemption will not have implications for ORR's enforcement of RVAR. DLR's application describes the actions it will take to manage safe boarding and alighting by wheelchair users where the gap is greater than that defined by RVAR. Granting the exemption will not change DLR's responsibility under health and safety legislation to reduce the risks arising from this aspect of its operation so far as is reasonably practicable. ORR therefore has no objection to the granting of this exemption.

Yours sincerely

Giles Turner
HM Inspector of Railways

Giles Turner | BEng(Hons) ACGI CEng MIMechE CMIOSH | Engineer, Rail Vehicles
Office of Rail and Road | One Kemble Street | 2nd and 3rd Floors | London | WC2B 4AN
Tel: 020 7282 3870

Web: www.orr.gov.uk | Twitter: [@railregulation](https://twitter.com/railregulation) – [@highwaysmonitor](https://twitter.com/highwaysmonitor)

Appendix C

Thanks Peter, below is the response that I sent to John:

Thanks John, we have no objections to the application with one exception. We would prefer not to see an untimed exemption, as this does not drive continuous improvement. The excellent work DLR have done in their application may not have happened if the previous exemption were untimed, and we would like to ensure that they (or an alternative operator if the concession changes hands) must demonstrate that they have done all the reasonably can in the future by providing a timed exemption of, say, upto 10 years.

For your records, I have just been appointed as Safety Adviser to both London TravelWatch and Transport Focus in addition to my Policy Officer role.

Many Thanks,

Robert Nichols,
Policy Officer,
London TravelWatch,
169 Union Street, London, SE1 0LL

Tel: 020 3176 5939

www.londontravelwatch.org.uk

Follow us on [Twitter](#), [You Tube](#) and [Flickr](#)



London TravelWatch issues an e-newsletter, keeping you updated on our activities. If you would like to receive this on a regular basis, please register at <http://newsletter.londontravelwatch.org.uk/em-signup>

London TravelWatch is the operating name for the London Transport Users Committee

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. You are also warned that messages and any associated files sent from or received by London TravelWatch may be monitored or stored and may be subject to public disclosure under the Freedom of Information Act

From: Peter Fullerton [<mailto:Peter.Fullerton@railexecutive.gsi.gov.uk>]

Sent: 18 May 2015 15:24

To: Andrew P; Robert Nichols

Subject: DLR's application for an exemption order

Importance: High

Andrew and Robert,

You will probably recall that we met with DLR in mid-April to discuss their exemption request. One of the actions from that meeting was for you to send any comments on their application to John Bengough. John, as you are probably aware has now left the Department and I am temporarily filling in. Apologies for any duplication but I would be

grateful if you could send a copy of any comments to me as soon as possible, as I would like to start the process for reviewing and drafting the exemption order.

If you have any questions, please contact me.

Peter



Peter Fullerton
Rolling Stock Advisor,
Zone 4/14, Great Minster House
33 Horseferry Road, London, SW1P 4DR
0207 944 2481 07879 693698

Leading a world-class railway that creates opportunity for people and businesses.

Appendix D

Peter

From what I remember from the meeting, the gaps weren't too bad but there was quite a lot of engineering needed to put them right (and there was settlement too).

I don't think DPTAC can complain about a 10 year dispensation and if they need to do research, then an extra 12 months shouldn't make much difference. I got the impression (and I'm sure DfT is monitoring this anyway) that DLR is genuinely working steadily towards improving the system to make it both compliant and user friendly, and that is what we are keen to see.

with
very
best wishes

Andrew

Andrew Probert
Research and Policy Advisor

606 Duncan House
Dolphin Square
London SW1V 3PP

020 7828 6249
07779 298 289

Dear Peter,

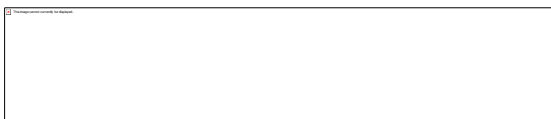
We have no objection to the additional 12 month exemption for the stated stations, and approve of the 10 year exemption overall.

Many Thanks,

Robert Nichols,
Safety Adviser to London TravelWatch and Transport Focus,
c/o 169 Union Street, London, SE1 0LL

Tel: 020 3176 5939
www.londontravelwatch.org.uk

Follow us on [Twitter](#), [You Tube](#) and [Flickr](#)



Dear Peter

Thank you for getting in touch about this. The proposed ten year exemption period does not introduce any additional requirements for the management of safety over those already considered. This applies equally to the twelve month extension on the dates originally proposed. It is disappointing that DLR proposed time scales that it has subsequently found it cannot meet, but this does not give rise to safety risks that are not already being managed. As for ORR's regulatory role in respect of accessibility legislation, neither the ten year exemption period nor the extension to DLR's time scales cause any difficulties. So, in summary, we have no objection to the arrangements you describe in your email.

Regards

Giles

Giles Turner | BEng(Hons) ACGI CEng MIMechE CMIOSH | Engineer, Rail Vehicles
Office of Rail and Road | One Kemble Street | 2nd and 3rd Floors | London | WC2B 4AN
Tel: 020 7282 3870

Web: www.orr.gov.uk | Twitter: [@railregulation](https://twitter.com/railregulation) – [@highwaysmonitor](https://twitter.com/highwaysmonitor)