

## **EXPLANATORY MEMORANDUM**

### **THE RAIL VEHICLE ACCESSIBILITY (GATWICK EXPRESS CLASS 460 VEHICLES) EXEMPTION (AMENDMENT) ORDER 2004**

**2004 No. 2150**

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 amends S.I. 2001/847, which exempts certain specified rail vehicles, used by Gatwick Express Limited, from certain requirements of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The effect of this amendment Order is to extend the expiry dates of two existing exemptions.

#### **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 constructed or adapted for passenger use, and first brought into use after 31<sup>st</sup> 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 The application for these amendments to the exemption Order has been made because the vehicles still do not comply with two of the requirements of the Regulations, and their exemptions from these requirements are shortly due to expire. The first requirement is that the height of the letters on internal visual display systems must be at least 35mm. The height of the letters on the system in question is only 32mm. The reason for the original non-compliance was that the vehicles were designed before the RVAR were fully developed and they did not at that time regulate for this particular item. It was too late to make the necessary alterations prior to service entry, and a 5-year period of exemption was granted until September 2004, by which time a replacement system would be available. However, even though the technology for Gatwick Express to comply is now available, to replace the systems would not be cost effective. Gatwick Express say, in mitigation, that the use of such a

display is not as crucial on their route as others as there is a very short journey time on a route that never varies and which has no intermediate stops. Most disabled passengers therefore experience no difficulty in knowing that they have reached their destination, which is one of the main policy aims behind this particular requirement.

4.4 The second amendment relates to the number of wheelchair spaces that should be provided on a train made up of regulated rail vehicles. When there are 8-11 vehicles, 3 wheelchair spaces must be provided on the train. These trains have 8 vehicles but only 2 wheelchair spaces are provided. However, one of the vehicles is primarily a luggage van containing only 10 seats. Shortly before completion of the construction of the vehicles Gatwick were caught out by a late change to the draft regulations, which required an extra wheelchair space, and they sought an exemption. It was decided to grant the exemption so as not to delay service entry, but for a shorter period than was originally requested. Gatwick Express have requested an extension to their exemption as the expense of providing an extra wheelchair space would be costly and result in a loss of passenger seats. In mitigation, Gatwick Express has found that the provision of 2 wheelchair spaces is adequate for this particular service, which operates during the day at 15-minute intervals.

4.5 Due to the nature of the Gatwick Express service, the effect of extending the existing exemptions is likely to be minimal. Although the trains do not follow best practice in improving access for disabled people they still represent a significant improvement over previous rolling stock. It should also be mentioned that of the 3,000 customer complaints received by Gatwick Express since 1 January 2001, none have related to the passenger information system or the number of wheelchair spaces.

## **5. Extent**

5.1 This instrument applies to Great Britain.

## **6. Policy background**

6.1 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. In this case the passenger information systems and wheelchair spaces were installed in the vehicles prior to service entry and Gatwick Express were granted short exemptions on this basis. To fit compliant systems retrospectively at this stage would be very costly. On this basis, and because evidence from the use of the vehicles shows that the potential impact on disabled users of the vehicles is negligible, the Secretary of State has decided to grant the application for further periods of exemption.

6.2 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 are attached to this Memorandum. The DPTAC agreed with the request by Gatwick Express for the exemptions to be granted until end April 2011, the date on which their franchise is due to expire. This was due in the main to the unique nature of the service and the lack of customer complaints. The DPTAC also recommended that Gatwick Express staff be required to undertake disability awareness training, monitor the effectiveness of the units and report any complaints to the DfT. However, as this is an amendment order and, judging from the performance of the units up to now, we do not feel it is necessary to add these further conditions to the Order. We will nonetheless inform Gatwick Express of DPTAC's suggestions. 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 extend the exemptions for the period shown in the Order.

## **7. Impact**

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

7.2 The impact on the public sector is negligible.

## **8. Contact**

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

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05 July 2004

Peter Colmans  
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Dear Peter

**Disability Discrimination Act 1995  
Rail Vehicle Accessibility Regulations 1998  
Application for Extension of Exemption by Gatwick Express**

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

Gatwick Express were seeking extensions to the current exemptions from regulations 13(7) and 15(3) in regards to their Class 460 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 the attached papers as follows:

Annex A - Class 460 : Clause 13(7)

Annex B - Class 460 : Clause 15(3)

Yours sincerely

**Ffion Grant  
DPTAC Secretariat**

## **RVAR Exemption Application**

**Gatwick Express**  
Class 460

### **Current Exemption**

Statutory Instrument 2001 No. 847

**Considered July 2004**

### **Regulation Clause Number**

13(7)

### **Regulation**

13(7) The first letter of, and numbers used in, announcements on visual systems shall be not less than 70 millimetres high on systems on the front of the vehicle and not less than 35 millimetres high on other systems, and all letters and numbers shall contrast with their background.

### **Period Sought**

2011 (end of franchise)

### **DPTAC Recommendation**

DPTAC were disappointed to receive this extension application from Gatwick Express, as it was our understanding that the relevant Passenger Information Systems would be replaced with RVAR compliant units before the current exemption expires in September 2004.

When considering this application, DPTAC were reluctant to recommend the granting of this extension given that the technology needed to comply is available, and Gatwick Express have had ample time to replace all the existing units.

However, when considering this application, DPTAC took into account the nature of the service provided by Gatwick Express, adequately staffed trains run every 15 minutes with a short journey time and no intermediate stops.

DPTAC were also mindful of Gatwick Express' statement that whilst operating this service with this exemption since 2001, none of the 3,000 customer complaints received related to this item.

Since we understand that it is unlikely that these vehicles will undergo refurbishment before the franchise ends in April 2011, DPTAC recommend that the application be granted for the requested period.

However DPTAC would like to see it made a condition of the granting of the application that:-

- All on-train staff undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- The effectiveness of these units should be monitored and
- Any complaints relating to these issues should be reported to the MIU.

If granted DPTAC recommend that this exemption should only remain valid for Class 460 vehicles, as specified in the application when operated by Gatwick Express on this service.

DPTAC wish to emphasise the importance of Passenger Information to disabled people during train journeys and wish to make it clear that this recommendation has been made after considering the specific circumstances of the service provided by Gatwick Express and should not be seen as setting a precedent for non compliance with RVAR on similar vehicles.

## **RVAR Exemption Application**

**Gatwick Express**  
Class 460

### **Current Exemption**

Statutory Instrument 2001 No. 847

**Considered July 2004**

### **Regulation Clause Number**

15(3)

### **Regulation**

(3) Subject to paragraph (4) where a train consists of a number of regulated rail vehicles shown in column A there shall be in that train not less than the number of wheelchair spaces shown in column B opposite that number of vehicles;

A	B
2 to 7 vehicles	2 wheelchair spaces
8 to 11 vehicles	3 wheelchair spaces
12 or more vehicles	4 wheelchair spaces

### **Period Sought**

28<sup>th</sup> April 2011 (end of franchise)

### **DPTAC Recommendation**

DPTAC are concerned that the provision for wheelchair users as set out in RVAR should not be compromised.

However, when considering this application, DPTAC took into account the nature of the service provided by Gatwick Express, adequately staffed trains running every 15 minutes with a short journey time and no intermediate stops.

DPTAC was pleased to receive confirmation from Gatwick Express that they had monitored the use of the wheelchair spaces as required in the original exemption and had found the current provision adequate. DPTAC were also reassured by Gatwick Express' statement that whilst operating this service with this exemption since 2001, that none of the 3,000 customer complaints received by them related to the limited wheelchair provision.

Since we understand that it is unlikely that these vehicles will undergo refurbishment before the franchise ends in April 2011, DPTAC recommend that the application be granted for the requested period.

However DPTAC would like to see it made a condition of the granting of the application that:-

- All staff (to management level) to undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- The use of the wheelchair spaces should continue to be monitored and

- Any complaints relating to this issue should be reported to the MIU.

If granted DPTAC recommend that this exemption should only remain valid for Class 460 vehicles, as specified in the application when operated by Gatwick Express on this service.

DPTAC wish to make it clear that this recommendation has been made after considering the specific circumstances of the service provided by Gatwick Express and should not be seen as setting a precedent for non compliance with RVAR on similar vehicles.