

EXPLANATORY MEMORANDUM

THE RAIL VEHICLE ACCESSIBILITY (HULL TRAINS CLASS 222) EXEMPTION ORDER 2004 No. 2180

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 new rail vehicles, which have been built for use by Hull Trains Limited, from a requirement of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The Order 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 The application for this exemption Order was made because the vehicles do not comply with one of the requirements of the Regulations. This is that the safety requirements for the folding nappy-changing table, which is situated in the wheelchair accessible toilet, mean that more force than is permitted by the Regulations is needed to deploy it. When stowing the table, the force requirements are met. This enables the wheelchair user to move the table out of the way if it has been left open by a previous user. In mitigation, industry argues that to fit a compliant device would involve danger to a seated toilet user who could be hit on the head if the table was not strongly retained. This feature is to be found in a number of new vehicles, all of which have been granted a similar exemption for the same reason.

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. The folding nappy-changing table is an additional and relatively newly designed feature incorporated for the benefit of passengers with small children. The RVAR were not drafted with this type of feature in mind, but it is a consequence of the incorporated safety requirements that it is non-compliant with the Regulations. 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.

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 only recommended a 5 year exemption, as opposed to the 15 years requested by the train operating company. However, as it is deemed unlikely that a suitable solution to this problem will be found before the time of the vehicles' half-life refurbishment (May 2019), it was recommended to the Secretary of State that the expiry date should reflect this. 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 shown in the Order. This is consistent with the approach taken with other vehicles containing this feature.

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, can answer any queries regarding the instrument.

RVAR Exemption Application

Hull Trains

Class 222

Considered April 2004

Regulation Clause Number

14(b)

Regulation

14. If a toilet is fitted in a regulated rail vehicle that vehicle shall comply with the following requirements:

(b) any door control device, or other equipment inside the toilet cubicle shall be operable by the exertion of a force of not more than 15 Newtons;

Period Sought

15 Years, until May 2019

DPTAC Recommendation

When considering this application, DPTAC was concerned that a design solution addressing all the relevant issues of accessibility, usability, maintainability and safety had not been developed.

We do not believe that the requirements of a wide range of parents and rail passengers had been fully considered during the design process. Whilst DPTAC appreciates that a great deal of thought and effort has gone into addressing the issues relating to the stowing of the baby change table, we were disappointed that no compliant solutions had been devised in relation to its deployment and use by disabled passengers.

Therefore DPTAC recommend that this exemption should be granted for a period of 5 years rather than the 15 year exemption requested.

If during this time an appropriate, compliant solution had not been achieved, DPTAC would expect to see evidence that a wide range of alternative opening/fastening mechanisms had been adequately explored.

We would also expect that during this time, this exemption would come within the scope of the expected Refurbishment Regulations

If granted DPTAC recommend that this exemption should only remain valid for Class 222 vehicles, as specified in the application when operated by Hull Trains on this service.