

EXPLANATORY MEMORANDUM

THE RAIL VEHICLE ACCESSIBILITY (SOUTH WEST TRAINS CLASS 444 AND CLASS 450 VEHICLES) EXEMPTION (AMENDMENT) ORDER 2004

2004 No. 3139

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 South West Trains, 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 constructed 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 an exemption from the RVAR was made because the vehicles do not comply with one of the requirements of the Regulations. This is the requirement in regulation 14(b) that the door control device or any other equipment inside a toilet cubicle shall be operable by a force not exceeding 15 newtons. In this case, more force than is permitted by the regulations is needed to deploy a folding nappy-changing table in the wheelchair accessible toilet. 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. South West Trains already have an exemption from this requirement for 100 of the Class 450 vehicles that are already in service. The new Order merely serves to extend the exemption to cover a further 10 new vehicles which are due in service shortly, and which are of exactly the same

design as the ones already in service. The feature being exempted 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. 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. In this case, the folding nappy-changing table is an additional and relatively new design 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.

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 these comments, together with a copy of the application, is attached to this Memorandum. As a number of South West Trains Class 450 vehicles already have an exemption from this requirement, the DPTAC were content for the exemption to be extended to cover the new vehicles. Under different circumstances it is likely that a shorter period of exemption would have been recommended. However, as it clearly makes sense for all of the vehicles to have the same period of exemption, the DPTAC were content for the exemption expiry date for the new vehicles to be the same as that of the vehicles already in service. We have also consulted Her Majesty's Railway Inspectorate, 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 this exemption for the period shown 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.

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21st September 2004

Dear Peter

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

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

South West Trains were seeking exemption from clause 14(b) in regards to their Class 450 vehicles (Tranche 2).

In making our recommendations, DPTAC have considered the application in terms of its 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 annexe A.

Yours sincerely

**Ffion Grant
DPTAC Secretariat**

RVAR Exemption Extension Application

South West Trains
Class 450 (Tranche 2)

Considered September 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

Life of Vehicle

DPTAC Recommendation

DPTAC previously considered South West Trains' application in regards to their Class 450 vehicles (Tranche 1) in April 2003, following which the Secretary of State granted exemption SI No 1704/2003.

DPTAC understand that the vehicles specified in this current application were excluded from the original 2003 application due to negotiations regarding the formation of the trains from 5 to 4 car vehicles.

DPTAC recommend that for consistency the vehicles listed in this application (Tranche 2) are added to those specified in the existing order in a consolidated exemption order.

For reference DPTAC's original response is attached below.

**DPTAC Recommendation
South West Trains Class 444 & 450 (Tranche 1)
Considered April 2003**

DPTAC members were disappointed to receive this application. They were concerned that a design solution addressing all the relevant issues of accessibility, usability, maintainability and safety had not been developed.

They did not believe that the requirements of a wide range of parents and rail passengers had been fully considered during the design process.

Therefore DPTAC recommend that this exemption should be granted for a period of 2 years rather than the lifetime 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.

If granted DPTAC recommend that this exemption should only remain valid for Class 444 & 450 vehicles, as specified in the application when operated by South West Trains on this service.

CLASS 450 (Tranche 2)

Application for Exemption from the
Rail Vehicle Accessibility Regulations 1998

by

SOUTH WEST **TRAINS**

Application for Exemption from the Rail Vehicle Accessibility Regulations 1998

An exemption is proposed by South West Trains, its offices being at Friars Bridge Court, 41-45 Blackfriars Road, London SE1 8NZ.

The additional exemption being applied for is in respect of 10 x Class 450 (Tranche 2) new trains being built by Siemens in Austria and Germany for the owners Angel Trains Ltd, which will be leased by South West Trains. The vehicle identification numbers and unit numbers are shown in Appendix 2. The 10 x Class 450 (Tranche 2) trains were ordered as part of the original Class 450 contract signed between Angel Trains and Siemens in April 2001. They were not included in the exemption granted in August 2003 (exemption number 2003 No.1704) because the formation of the trains was, at that time, being re-negotiated to convert from 5 car to 4 vehicle units.

The Class 450(Tranche 2) will join with the 100 x Class 450 (Tranche 1) South West Trains fleet on outer suburban commuter routes. The Class 450 (Tranche 2) new trains are identical to Class 450 (Tranche 1) and have been manufactured as a direct follow-on to Class 450 (Tranche 1), without a break in production.

Both the Class 450 (Tranche 1) and Class 450 (Tranche 2) new trains are 4-vehicle units, which can be coupled to form longer train formations. All the units have dedicated facilities for disabled passengers.

Exemption is being sought from Clause 14(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”

Non-Compliance:

A fold-down table is fitted in the “wheelchair accessible toilet” on all Class 450 trains. This table provides nappy-changing facilities for passengers travelling with babies and small infants. Whilst the table has been designed to allow it to be closed with a force of 15N, the force required to deploy the table is in excess of this figure.

Mitigation:

The table is retained in its stowed position magnetically. A high retaining force has been provided to ensure that there is no danger of the table falling down if the vehicle experiences sudden lateral accelerations in service. This is particularly important since the table is situated above and immediately behind the toilet and would therefore fall on the head of any passenger seated on the toilet. The safety benefit of this magnetic retention force has been acknowledged by HMRI.

The table is stowed ‘flush’ within a recess in the wall. It folds down about a pivot situated towards its lower (rear) edge. There is a hand recess in the wall, adjacent to the top (front) edge of the table allowing the four fingers of one hand to be inserted to pull the table down. *Photo (a) - Appendix 1.*

The downward motion of the table is not damped but is naturally controlled by the thumb of the user. *Photo (b) - Appendix 1.*

The table is closed and stowed by simply lifting the front edge and pushing the table back into its recess, where it is automatically held by the retaining magnets. *Photo (c) - Appendix 1.*

This design has been adopted so that wheelchair users or other passengers with limited mobility find it as easy as possible to stow the table if they should find it already deployed when they enter the “wheelchair accessible toilet”. *Photo (d) - Appendix 1.*

This design is proposed as the optimum balance between usability, practicality and safety.

Effects of non-compliance on the ability of a disabled person to use the train:

It is considered that the number of disabled parents or carers who are able to carry a baby but would find the deployment of the table difficult will be very low. It is also considered that a large percentage of passengers with dexterity impairments will find this design the easiest to stow safely if it has been left deployed since there are no catches or locks to operate.

Period of exemption and plans for later modification of rail vehicles:

Together with the train owners and manufacturers, South West Trains believes that this design feature provides disabled passengers the best balance of usability, practicality and safety. Exemption is therefore sought for the life of the vehicles.

Impact of complying with the regulations:

Any practicable modification to provide a compliant design would make the nappy-changing table significantly more difficult to operate for a number of disabled customers who have dexterity related impairments, most notably for those wishing to safely stow the table rather than to deploy it.

Appendix 1

Photographs of nappy-changing table

a) Using the finger recess to pull down the nappy changing table.



b) Controlling the downward motion of the table with the thumb.



c) Nappy changing table retention magnets.



d) Nappy changing table deployed.



Appendix 2

Class 450 (Tranche 2) unit and vehicle numbers

UNIT No	DMOSA	TOCL	TOSLW	DMOSB
450101	63751	66801	66851	63701
450102	63752	66802	66852	63702
450103	63753	66803	66853	63703
450104	63754	66804	66854	63704
450105	63755	66805	66855	63705
450106	63756	66806	66856	63706
450107	63757	66807	66857	63707
450108	63758	66808	66858	63708
450109	63759	66809	66859	63709
450110	63760	66810	66860	63710