

**EXPLANATORY MEMORANDUM TO
THE RAIL VEHICLE ACCESSIBILITY (SOUTH CENTRAL TRAINS CLASS 377/4)
EXEMPTION ORDER 2004**

2004 No.3198

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 Central Trains, from 2 requirements of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The Order sets expiry dates.

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 exemptions from certain requirements of the RVAR was made because the vehicles do not comply with 4 requirements of the Regulations. These relate to the fitting of handholds to certain seats and the force required to deploy a folding nappy-changing table situated in the wheelchair accessible toilet. South Central also applied for 2 exemptions relating to obstruction of and access to the wheelchair space by the provision of bicycle racks. The Secretary of State has decided not to grant these 2 exemptions, and the vehicles are therefore required to comply with the requirements of the RVAR in those particular respects. This follows on from a recent investigation into whether the fitting of bicycle racks in wheelchair spaces is in contravention of the RVAR, which has been something of a grey area in the past. The Department’s policy is now actively to seek to prohibit this practice. Attached to the end of this memorandum is a copy of a letter we have sent out to all the train operating companies on this matter.

4.4 The problem with the seat-back handholds affects only 37 of the 75 class 377/4 units and, within those 37 units, only 4 seats within each unit (2 seats in each of 2 vehicles within the units). This is because the operator originally planned to separate back-to-back seats in the centre of the vehicles with a curtain and supporting framework which would have meant that, under the requirements of the RVAR, they would not be required to have such a handhold. However, following a visit to the train mock-up by DfT officials and other relevant parties, the design was rejected as being unsuitable. They have now opted for an alternative solution involving the fitment of a draught-screen between the back-to-back seats but this will take around 18 months to fit to the first 37 units, which were already substantially complete when the design was changed. The remaining 38 units will be built to the new design, and therefore need no exemption. The company has therefore applied for an exemption in respect of the non-compliant vehicles until May 2006. In mitigation, the non-compliant seats back on to seats which have handholds fitted so passengers will have something to hold on to; it is only the fact that the back-to-back seats do not touch that renders them non-compliant.

4.5 The company has also sought an exemption from the requirement that any equipment inside a toilet cubicle shall be operable by the exertion of a force not exceeding 15 newtons. In this case, a force greater than that permitted by the regulations is needed to deploy the 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. 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. 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 request for exemption from the handhold requirement came as a result of the need for a late change in design. This has meant that, whereas the operator previously thought the vehicles would be compliant by the time of service entry, they now have to make a modification to some of the vehicles which will take

around eighteen months to achieve. In the case of the folding nappy-changing table, this 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 which are attached to this Memorandum. The DPTAC were disappointed that South Central had not been able to fit compliant handholds to all the vehicles in the time since the curtain design was rejected but were happy that handholds were fitted to the adjacent seats. They therefore agreed to the exemption being granted for 2 years. The implication for not granting the exemption is that the service entry of the vehicles will be delayed which will mean that existing slam door trains with guards vans will continue in their place. The advantages to disabled people in using the new vehicles, even with this minor non-compliance, considerably outweigh the disadvantages of using the older rolling stock.

7.3 With the folding nappy-changing table, this issue has arisen before and the DPTAC only considered that a 5-year exemption should be granted, rather than the life of vehicle period sought. We have been granting exemptions for a 15-year period to other train operators who have applied for an exemption from this requirement, which is the estimated time of the vehicle's half life refurbishment. However, in view of the comments made by the Merits Committee in their 18th Report about the length of these exemptions, we have agreed with DPTAC's recommendation that only a 5-year period of exemption be granted. The DPTAC also recommended adding conditions in the Order that South Central staff should take disability awareness training and notify DfT if any accidents occur in relation to the issues covered by the exemptions. As these are relatively minor exemptions, the Secretary of State did not consider it is necessary to make the Exemption Order subject to such conditions. However, the Department will notify the operator of DPTAC's recommendations when the Order comes into force. 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 these 2 exemptions for the periods 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.

Peter Colmans
DfT Mobility and Inclusion Unit
1/18 Great Minster House
76 Marsham Street
London
SW1P 4DR

Dear Peter

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

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

South Central Ltd were seeking an exemption from regulations 11(3), 14(b) & 16(1b,d) in regards to their Class 377/4 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 - Clause 11(3)

Annex B - Clause 14(b)

Annex C - Clause 16(1b,d)

Yours sincerely

Ffion Grant
DPTAC Secretariat

RVAR Exemption Application

South Central Ltd
Class 377/4

Considered July 2004

Regulation Clause Number

11(3)

Regulation

11(3) Subject to paragraph (4) a handhold shall be fitted to the top of the back of each seat which faces towards an end of a regulated rail vehicle and which is next to a gangway in a passenger saloon and shall comply with the following requirements:

- (a) the surface of a handhold (excluding the mountings to the seat) shall be rounded;
- (b) a handhold shall contrast with the seat to which the handhold is attached;
- (c) a handhold shall have a slip-resistant surface;

(d) there shall be no gap less than 150 millimetres wide measured in any direction in a handhold or between a handhold and the seat to which it is attached.

Period Sought

31st May 2006

DPTAC Recommendation

When considering this application, DPTAC were disappointed that South Central had not been able to install complaint fixtures during the period since the original design was rejected in January 2004.

However, in this particular instance - where the seats without handholds abut seats with handholds, the Committee did not feel that that the lack of handholds would cause a significant impediment to disabled passengers being able to travel in safety and comfort.

Further, some members were concerned that the placement of 2 handholds in such close proximity with only a 50mm gap between, may in fact have a detrimental effect on some disabled passengers ability to use either of these handholds with ease and comfort.

DPTAC are aware that these vehicles are currently being used in service without an exemption and are concerned that this non-compliance should be rectified as soon as possible.

Therefore DPTAC recommend the granting of this exemption for a maximum of the 2 years requested, subject to technical guidance from the MIU on the timescale necessary to retrofit the handholds.

DPTAC also recommend that if granted the following conditions should apply:

- All on-train staff undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- Any complaints and/or accidents relating to these issues should be reported to the MIU.

If granted DPTAC recommend that this exemption should only remain valid for Class 377 vehicles, as specified in the application, when operated by South Central Ltd on this service.

RVAR Exemption Application

South Central Ltd

Class 377/4

Considered July 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

Permanent

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 lifetime exemption requested.

DPTAC also recommend that if granted the following conditions should apply:

- All on-train staff undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- Any complaints and/or accidents relating to this issues should be reported to the MIU.

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 377 vehicles, as specified in the application when operated by South Central Ltd on this service.

RVAR Exemption Application

South Central Ltd
Class 377/4

Considered July 2004

Regulation Clause Number

16(1b,d)

Regulation

(1) A wheelchair space shall comply with the following specifications:

(b) subject to regulation 18 there shall be no obstruction of the space between the floor and the ceiling of the regulated rail vehicle, other than an overhead luggage rack or an openable window (if fitted);

(d) no magazine rack or other fitting for the use of other passengers shall be accessible through the space, other than an overhead luggage rack or an openable window (if fitted);

Period Sought

Permanent

DPTAC Recommendation

DPTAC are aware that this is an issue which has not previously been raised in relation to Electrostar vehicles, which are currently in passenger operation with this bicycle stowage configuration in the wheelchair space.

However the Committee has now been made aware of legal advice received by the MIU that these fixings constitute a breach of the regulations.

DPTAC would like to make it clear from the outset, that we are not against the carriage of bicycles on trains. However we are concerned by the conflict for space which often occurs between cyclists and wheelchair users, especially in relation to the wheelchair space.

Members of the Committee have personal experience of travelling on these vehicles when bicycles are also being carried and have found that even when stowed properly, bicycles can impede access to and movement within the vehicle, in particular impeding access to the wheelchair accessible toilet.

The point was also raised that if a wheelchair user wants to board the train at a point after the originating station, even if the space has been pre-booked, if bicycles have already been stored in the wheelchair space, it can be a long, complicated and often unsuccessful process to identify the owners and remove them.

Therefore DPTAC recommend that these applications should not be granted.

We recommend that separate designated provision should be made for bikes, which would not impede access and flow for other passengers including those with a visual impairment or wheelchair users.

The Committee would like to see South Central Ltd develop a robust, practical management procedure for the carriage and management of bikes, and would also expect, train and station staff to be appropriately trained and supported by management in dealing with cyclists and their expectations. This should include the clear signage of the wheelchair space to show the priority of wheelchairs and the maintenance of clear access to the accessible toilet unit.

Head of the Mobility & Inclusion Unit

Room 1/18
Great Minster House
76 Marsham Street
LONDON SW1P 4DR
Direct Line +44 (0) 20 7944 4461
Fax +44 (0) 20 7944 6102
Minicom +44 (0) 20 7944 3277
GTN 3533 4461
EMAIL ann.frye@dft.gsi.gov.uk
Website: www.mobility-unit.dft.gov.uk

Ann Frye

Department for
Transport

1 October 2004

«Title» «FirstName»

«LastName»
«JobTitle»
«Company»
«Address1»
«Address2»
«Address3»
«address4»
«PostalCode»

«Country»

Carriage of Bicycles in Wheelchair Spaces

I am writing to clarify the Department's policy on the carriage of bicycles in wheelchair spaces on regulated rail vehicles. This reflects our interpretation of the requirements of two of the regulations within the Rail Vehicle Accessibility Regulations 1998 (RVAR).

These are Regulations 16(1)(b) and (d), which state that:

(b) subject to regulation 18 [tables] there shall be no obstruction of the space between the floor and the ceiling of the regulated rail vehicle, other than an overhead luggage rack or an openable window (if fitted); and

(d) no magazine rack or other fitting for the use of other passengers shall be accessible through the space, other than an overhead luggage rack or an openable window (if fitted).

In our view fitting bicycle restraint systems within the wheelchair spaces breaches both these Regulations.

In light of this, we have held discussions with the Strategic Rail Authority and the Department's policy line, agreed by Ministers, is that operators should:

- a) require the manufacturers of their trains to cease fitting bicycle racks or restraints in the wheelchair spaces of those vehicles that are under construction and on future builds/refurbishments;
- b) remove non-permanent bicycle racks and restraints (such as those fitted to Class 170s). Operators who continue to operate units fitted with these devices may be considered to be in breach of the RVAR;

- c) either remove fixed bike racks that are already in place (believed to include units within Classes 357, 375 and 377) or, if this is considered to be unreasonably expensive or disruptive to operations, the operator concerned should apply for retrospective exemptions. No assurance can be given that an exemption will be granted but each case will be considered on its merits; and
- d) remove all internal and external signage that indicates that bicycles can be stored in wheelchair spaces.

We acknowledge that this will have the immediate effect of reducing the number of bicycles that can be carried aboard train services. We would therefore encourage you to consider the installation of additional secure cycle storage facilities at those stations that you manage. The Department has already announced funding of over £500,000 for improved cycle parking equipment at over 200 priority stations identified in a Cyclists Touring Club survey as having unmet demand. I understand the SRA will shortly be inviting TOCs to take up this offer. The SRA's forthcoming Cycle Policy will, I understand, also include advice on the provision of cycle parking and on other initiatives, which can help promote bike and rail journeys. The recently published Countryside Agency's "Bike and Rail - a good practice guide" also contains advice and examples of providing improved facilities for cyclists.

In the longer term, particularly for new rolling stock, the Department wants TOCs to provide alternative, dedicated cycle storage spaces on their trains particularly where any potential seat loss can be mitigated through the use of tip-up seating. The Disabled Persons Transport Advisory Committee (DPTAC) - the Department's statutory advisory body on disability issues - also supports the provision of dedicated cycle storage space on trains. The Committee regards these as an additional means of ensuring that wheelchair spaces are kept clear and of reducing the danger of passengers with visual impairments colliding with casually stored bicycles.

If you need further advice on the removal of bicycle restraints from wheelchair spaces, please contact John Bengough in the MIU Team on 020 7944 5035 or john.bengough@dft.gsi.gov.uk.

This letter has been copied to ATOC, SRA, ROSCOS, train manufacturers and DPTAC.

A handwritten signature in blue ink, appearing to read 'Ann Frye', followed by a long horizontal line that loops back to the right.

Ann Frye
Mobility & Inclusion Unit