

EXPLANATORY MEMORANDUM TO
THE RAIL VEHICLE ACCESSIBILITY (MIDDLETON RAILWAY DREWRY CAR) AND
(CAIRNGORM FUNICULAR RAILWAY) EXEMPTION (AMENDMENT) ORDER 2011

2011 No. 2705

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

2. Purpose of the Instrument

2.1 The Rail Vehicle Accessibility (Middleton Railway Drewry Car) and (Cairngorm Funicular Railway) Exemptions (Amendment) Order 2011 (the "Order") amends the Rail Vehicle Accessibility (Middleton Railway Drewry Car) Exemption Order 2002¹ (the "Middleton Order") and the Rail Vehicle Accessibility (Cairngorm Funicular Railway) Exemption Order 2002² (the "Cairngorm Order") which exempt specified rail vehicles from certain requirements of the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010³ ("RVAR"). The amendments relate to certain conditions that the exemptions granted in 2002 were made subject to and are explained in further detail in paragraphs 7.3 to 7.5.

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

3.1 The Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 (the "2008 Regulations") govern how exemption orders such as this are to be made.⁴ Under the 2008 Regulations, orders exempting rail vehicles from RVAR without an expiry date, as is the case with this Order, would normally be subject to the draft affirmative resolution procedure. However, regulation 5(2) of the 2008 Regulations provides for the Secretary of State, having regard to the circumstances and representations of the Disabled Persons Transport Advisory Committee⁵ ("DPTAC"), to elect to make orders which would otherwise be subject to the draft affirmative procedure, using the negative resolution procedure instead.

3.2 Given the small size of the two applicant railways, the low number of vehicles involved (three) and the fact that no new exemptions are being sought, the Secretary of State consulted DPTAC on the use of the negative resolution procedure to make amendments to the Middleton Order and the Cairngorm Order (as well as on the merits of the applications for amendment themselves). DPTAC did not object to the use of the negative resolution procedure on this basis. The Secretary of State has therefore decided to use this discretion and to allow this Order to be made using the negative resolution procedure.

4. Legislative Context

¹ S.I. 2002/1188

² S.I. 2002/657

³ S.I. 2010/432 which repealed S.I. 1998/2456 and S.I. 2000/3215.

⁴ S.I. 2008/2975, see in particular regulation 5.

⁵ DPTAC was established under section 125 of the Transport Act 1985 to advise the Government on the public passenger transport needs of disabled people.

4.1 Section 46 of the Disability Discrimination Act 1995 (the “DDA”), now replaced by section 182 of the Equality Act 2010 (“EA 2010”), gave powers to the Secretary of State to make rail vehicle accessibility regulations to ensure that rail vehicles to which the regulations applied conformed to standards and specifications which enabled disabled persons, including wheelchair users, to access those rail vehicles and to travel in safety and reasonable comfort. The Secretary of State made the Rail Vehicle Accessibility Regulations 1998⁶ (“RVAR 1998”) under section 46 of the DDA, which initially applied to all passenger rail vehicles that first entered service after 31st December 1998, and set technical standards such vehicles were obliged to meet to facilitate use by disabled travellers.

4.2 In 2010 RVAR 1998 was revoked by RVAR. RVAR applied similar accessibility requirements (which had been updated in light of experience and progress in technology) to all passenger vehicles on light rail systems such as tramways and the London Underground. Passenger rail vehicles on national "heavy rail" lines have been subject instead to pan-European access requirements since 2008.⁷

4.3 Section 47 of the DDA (now section 183 of the EA 2010) provided the Secretary of State with a power to exempt certain rail vehicles by Order from RVAR 1998 (now RVAR) requirements thereby authorising regulated rail vehicles to be used in passenger service even though they do not conform to some, or all, of the requirements of rail vehicle accessibility regulations. In accordance with section 183 of the EA 2010, exemption orders can include conditions and restrictions and a large number have been made since 1998.

4.4 This Order is an exemption order made under section 183 of the EA 2010 and amends conditions attached to the exemptions in the Middleton Order and Cairngorm Order.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

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 objectives of the EA 2010 and RVAR are to ensure certain accessibility standards apply to passenger rail vehicles for the benefit of disabled people. Broadly, vehicles first brought into passenger use after 31st December 1998 must meet these requirements,⁸ and other vehicles must comply by 1st January 2020.⁹ Where applications are received for exemption from RVAR requirements, or for amendments to existing exemptions, each is considered on a case by case basis. Applications for amendments to

⁶ S.I. 1998/2456

⁷ Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008, S.I. 2008/1746

⁸ As previously noted, passenger rail vehicles on national, "heavy rail" lines have been subject instead to pan-European access requirements since 2008.

⁹ However, vehicles that were introduced into passenger service before 1 January 1999 are exempt from meeting this deadline provided they operate on one of the heritage or tourist networks listed within the Schedule of the Rail Vehicle Accessibility (Networks) Exemption Order 2010 S.I. 2010/904. The Middleton Railway and Cairngorm Funicular Railway are listed within the Schedule to that Order.

existing exemption orders have been received from two separate operators; the Middleton Railway and the Cairngorm Funicular Railway.

7.2 Given the minor nature of the amendments required to the existing Middleton Order and Cairngorm Order, the Department has decided to make the amendments in a single order rather than two separate statutory instruments for reasons of efficiency and best use of Parliamentary time.

The Middleton Railway

7.3 The Middleton Railway in Leeds was granted an exemption from RVAR 1998 in 2002 which allowed it to use its Drewry Car vehicle (which was built in the 1950s for maintenance purposes and only adapted for passenger use in 2002) despite it not fully complying with RVAR 1998— although the vehicle does now include several accessibility features, including a wheelchair space. The Middleton Order was granted subject to a number of conditions, including the condition that the exempted vehicle only be used on the Middleton Railway in Leeds.

7.4 The Middleton Railway has applied to the Department to have that condition lifted, as it wishes to be permitted to occasionally use the Drewry Car on other tourist and heritage networks listed within the Rail Vehicle Accessibility Network Exemption Order.¹⁰ The remaining conditions stipulated in the Middleton Order are unaffected and remain in place, regardless of where the Drewry Car is operated.

The Cairngorm Funicular Railway

7.5 The Cairngorm Funicular Railway was granted an exemption from RVAR 1998 when it opened in 2002 which allowed it to operate its two funicular rail vehicles despite their not complying with two requirements of RVAR 1998 relating to the colour of the exterior of the vehicles and visual destination announcements. The exemptions are due to expire on 31st December 2011 and the operator has applied to the Department to have this expiry date removed so the exemptions extend indefinitely. The remaining condition stipulated in the Cairngorm Order is unaffected and remains in place.

7.6 A copy of the applications from the Middleton Railway and the Cairngorm Funicular Railway can be found at **Annex A and B** respectively.

7.7 The Department is not aware of any complaints about the accessibility of these three vehicles since they entered service in 2002. Indeed, both operators provide a significantly more accessible service on the routes in question than had previously been the case. By permitting the Middleton Railway Drewry Car to be used elsewhere than on that railway, disabled people, particularly wheelchair users given the wheelchair space in the vehicle, who are visiting other heritage or tourist networks that the Drewry Car vehicle is being loaned to, will not only be able experience that unique vehicle but also to travel on routes that may not normally be accessible to them. The Cairngorm Funicular provides access (including to wheelchair users) to the top of the Cairngorm mountain range and replaced a less accessible cable car.

¹⁰ S.I. 2010/904

8. Consultation Outcome

8.1 Section 183(4) of the EA 2010 requires the Secretary of State, as part of his consideration of an application for exemption or an application to amend an existing exemption, to consult DPTAC together with any other appropriate persons. Both applications were posted on the Department's web site.

8.2 Comments on both applications were received from DPTAC and the Office of Rail Regulation (ORR) while the Health & Safety Executive and Transport Scotland provided comments on the Cairngorm application only - these are attached as **Annexes C** (for Middleton) and **D** (Cairngorm). Consultees had no objection to the applications, although DPTAC made comments about specific aspects of the exemptions requested, which are set out below. DPTAC was content for the Order to be dealt with under the negative resolution process.

Middleton Railway

8.3 DPTAC was content to support the use of the Drewry Car on other heritage and tourist networks listed in the Network Exemption Order once it was confirmed that the existing boarding ramp would accompany the vehicle to those sites, and that staff there would receive briefing on how to use it.

Cairngorm Funicular Railway

8.4 While DPTAC would ideally like the exterior of the doors to the vehicles to contrast with the bodyside, the Committee felt able to support the indefinite extension to the existing exemption, particularly given the environmentally sensitive location of the railway.

8.5 The ORR suggested some mitigation for the lack of external passenger information displays, while Transport Scotland felt there was no need to provide anything.

9. Guidance

9.1 Comprehensive guidance on the application of RVAR 1998 has been published.¹¹ This remains relevant to RVAR.

10. Impact

10.1 An Impact Assessment has been prepared for this instrument as it has an impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The Order is deregulatory and allows two small businesses (including one that is a charity) to extend (whether geographically or in time) the use of vehicles which do not fully meet rail vehicle accessibility requirements.

¹¹ See www.dft.gov.uk/transportforyou/access/rail/vehicles/pubs/rva/rvareg1998

12. Monitoring & 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 with the requirements of RVAR.

12.2 Since the Order amends existing exemption orders which contain exemptions that are not time limited, the Secretary of State will keep these provisions under review and will consider whether to revoke these exemptions in future, in consultation with stakeholders, if it were felt that these were no longer appropriate. The Office of Rail Regulation is the enforcement body for RVAR and is responsible for ensuring that the conditions which the Middleton Order and Cairngorm Order are subject to are adhered to.

13. Contact

John Bengough at the Department for Transport (Tel: 020 7944 5035 or e-mail: john.bengough@dft.gsi.gov.uk) can answer any queries regarding the Order.

The Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010 SI 427/2010

Schedule 1 - Particulars to be provided with applications for exemption orders for rail vehicles

the full name of the applicant;	Ian Robert Dobson on behalf of the owners of the Drewry Car DB998901 (The EM2 Locomotive Society) and the operators (The Middleton Railway Trust Ltd)
the address of the applicant which, in the case of a company, must be the address of its registered or principal office;	21 Harper Grove, Idle, Bradford, BD10 8NX
a description of the rail vehicle to which the application relates, including the— (i) class number; (ii) unit number; (iii) vehicle number; (iv) name of the manufacturer; (v) place of manufacture; and (vi) date the vehicle first brought into use, (unless not yet brought into use);	Drewry Car DB998901 built by the Drewry Car Company Ltd in 1950. Brought into Passenger use in June 2002 following The Rail Vehicle Accessibility (Middleton Railway Drewry Car) Exemption Order 2002 SI 1188/2002
a general description of the services which the rail vehicle is likely to be used to provide and the routes on which it is likely to be operated;	Special type of transport service primarily for tourist, educational or recreational purposes. Middleton Railway and any other network listed in the Schedule to the Rail Vehicle Accessibility (Networks) Exemption Order 2010 SI 904/2010
the provisions of RVAR from which exemption is sought	Under RVAR 1998, these were: regulation 4(1), (2), (3); regulation 10(1)(b); regulation 11(1)(a), (2)(a), (3); regulation 12; regulation 13; regulation 16(1)(e); regulation 19(1), (2); and regulation 23(7)(b), (d). Under RVAR 2010, equivalent provisions are: Schedule 1, Part 1 paragraphs 3(1), (3), (5); paragraph 17; paragraph 10(1)(a), (4)(a); paragraph 9(1); paragraph (5)(1); paragraph 11; paragraph 20(5); paragraph 6(1), (2); and paragraph 1(5)(b), (e) respectively.
the technical, economic and operational reasons for the application;	The Rail Vehicle Accessibility (Middleton Railway Drewry Car) Exemption Order 2002 SI 1188/2002 currently exempts this vehicle from the provisions of RVAR listed above – but only when it is operated on the Middleton Railway in Leeds. An amendment is sought, that lifts this restriction and allows the vehicle to be used on those other networks that the Department for Transport has already recognised provide a tourist, educational or recreational experience
the effect which non-compliance with the provisions referred to in sub-paragraph (e) would have on a disabled person's ability to use the rail vehicle;	the colour of the exterior doors does not contrast with that of the vehicle body; no audible warning device is fitted to passenger doorways; the interior transparent surfaces are not marked as required; there is no handrail on the interior side of the external

	<p>passenger doorways; the handrails are not of the required diameter; handholds are not fitted to the top of the seat backs; more force than is permitted is required to operate the door handles; there is no passenger information system; the wheelchair space is not fitted with a communication device; there is no wheelchair compatible doorway on one side of the vehicle; the wheelchair compatible doorway is not of the required width; and the wheelchair ramp is not of the required width and cannot support the required minimum weight.</p>
the measures proposed, if the application is granted, to enable a disabled person to use the rail vehicle;	The mitigation measures contained within article 5 of SI 1188/2002 will remain in place.
the period for which the exemption order is requested to be in force;	Indefinite
unless an exemption order is sought for an indefinite period, the proposed timetable of action, before it would cease to be in force, to render the rail vehicle compliant with any RVAR provisions from which it had been exempt;	
where prior consultation with the operator of the rail vehicle is required by regulation 3(2), the response of the operator to the consultation;	n/a

The Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010 SI 427/2010

Schedule 1 – Particulars to be provided with applications for exemption orders for rail vehicles

the full name of the applicant;	Mr Ian Whitaker (CEO). Cairngorm Mountain Ltd
the address of the applicant which, in the case of a company, must be the address of its registered or principal office;	Cairngorm Ski Area Aviemore Inverness-shire PH22 1RB
a description of the rail vehicle to which the application relates, including the— (i) class number; (ii) unit number; (iii) vehicle number; (iv) name of the manufacturer; (v) place of manufacture; and (vi) date the vehicle first brought into use, (unless not yet brought into use);	The vehicle manufacturer is Gangloff cabins of Switzerland. No specific numbering is evident. A funicular railway the train comprises two single rail vehicles that are connected to each other by means of a steel rope. Each vehicle has four passenger compartments and a carriage attendant's compartment. The rail vehicle was brought into passenger service on 23 rd December 2001
a general description of the services which the rail vehicle is to be used to provide and the routes on which it is to be operated;	The funicular railway runs for 2km from the Base Station (lower point) to the Ptarmigan Station (higher point) and back, as one vehicle approaches the Ptarmigan Station the other approaches the Base station. There is also an open structure station at the midpoint of the funicular's length, the Shielling Mid Station. It is primarily a passenger service although goods to provide the services at the Ptarmigan station are also carried. The vehicle is designed so the compartment floors are level with the stations platform levels.
The provisions of RVAR from which exemption is sought	Paragraphs 3(1) and Paragraph 11(3)(a) of Part1, Schedule 1
the technical, economic and operational reasons for the application;	Paragraphs 3(1) (contrasting doors) The rail vehicle is of a single colour for environmental visual reasons. The rail vehicle has four compartments. The width of each compartment is the same width as the section of the rail vehicle between compartments i.e. the doors completely obscure the body panel of the rail vehicle. It will therefore not be possible to utilise the colour contrast on the rail vehicle. Passengers are not allowed onto the platform until the rail vehicle has stopped at the platform and passengers have disembarked. With the doors open it would not be possible to identify any contrast in colour as only one colour would be visible. <hr/> Paragraph 11(3)(a) (visual announcement)

	The railway comprises a single route between two end stations and an intermediate station
the effect which non-compliance with the provisions referred to in sub-paragraph (e) would have on a disabled person's ability to use the rail vehicle;	<p>Paragraphs 3(1) (contrasting doors)</p> <p>The non-compliance will not affect the ability of the disabled persons to use the rail vehicles due to the specific features that have been designed into the funicular railway. These comprise:-</p> <ul style="list-style-type: none"> (a) The funicular railway control system always aligns the rail vehicle at predetermined positions on the platforms. (b) The platform is of a stepped construction. The lowest compartment within the rail vehicle which is for the use by disabled persons will however be positioned below the lowest step i.e. a disabled person will enter and exit the rail vehicle on a level surface, without having to use steps. (c) The areas of the platform which are positioned adjacent to the door openings will be identified by the use of a contrasting colour to the overall platform and incorporate a highlighting margin. These areas extend the full length of the platform and are 1122mm wide (the width of the door to the rail vehicle is 920mm) <hr/> <p>Paragraph 11(3)(a) (visual announcement)</p> <p>None.</p> <p>Information relating to the service being operated is dictated by the time of year e.g. In summer the rail vehicle does not stop at the intermediate station in winter it does. This is identified via the ticketing process</p> <p>Persons wishing to join the rail vehicle at the intermediate station will see the direction of travel of the rail vehicle and will therefore be able to determine whether the rail vehicle is travelling in the required direction.</p>
The measures proposed, if the application is granted, to enable a disabled person to use the rail vehicle;	None specifically proposed. The measures identified above will enable disabled persons to use the rail vehicle. Staff are always on hand to assist disabled people
the period for which the exemption order is requested to be in force;	Indefinite
unless an exemption order is sought for an indefinite period, the proposed timetable of action, before it would cease to be in force, to render the rail vehicle compliant with any RVAR provisions from which it had been exempt;	N/A
where prior consultation with the operator of the rail vehicle is required by regulation 3(2), the response of the operator to the consultation;	N/A



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11 November 2011

Exemption Application – Middleton Railway – Drewry Car

DPTAC thank Middleton Railway for consulting DPTAC on the Exemption application for the Drewry Car.

As Middleton Railway have committed to providing a portable access ramp and a staff briefing note at any station used, we are willing to support the amendment to the Drewry Car's current Exemption.

Considering the previous Exemption granted to the Drewry Car, DPTAC agree that it is appropriate to use the negative resolution procedure.

Yours sincerely,

A handwritten signature in black ink that reads 'Tomi Jones'. The signature is written in a cursive style with a prominent horizontal stroke at the beginning.

**Tomi Jones
Deputy Chair
DPTAC**

25/5/2011

Dear Mr Bengough

Equality Act 2010 Section 183 exemption application by Middleton Railway ref
RGEN/39/24/24/2/5

Thank you for the opportunity to comment on the Middleton Railway application to amend the existing exemption Order in order to permit the Drewry Car to be used on other networks.

ORR does not have concerns over the safety implications of amending this exemption, nor the enforceability of the legislation with this amendment to the exemption in place.

Yours sincerely,

Giles Turner
Engineer, Rail Vehicles
Engineering & Asset Management
Railway Planning & Performance Directorate
Office of Rail Regulation



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09 August 2011

Equality Act 2010 Section 183 exemption application by Cairngorm Funicular Railway

Thank you for consulting on the exemption extension request for the Cairngorm Funicular Railway.

We agree with the proposal to extend the extension indefinitely. However, the doors would ideally contrast with the bodyside if a colour scheme could be devised that did not harm the appearance of the railway within its environment and which did not impose a significant burden on the operator.

DPTAC agree that it is appropriate to use the negative resolution procedure.

Yours sincerely,

**Tomi Jones
Deputy Chair
DPTAC**

11/8/2011

Dear Mr Bengough,

Equality Act 2010 Section 183 exemption application by Cairngorm Funicular Railway

Thank you for giving ORR the opportunity to comment on the application for an exemption from elements of the Rail Vehicle Accessibility Regulations by the Cairngorm Funicular Railway (CFR). ORR has not identified any difficulties that the exemption would cause in enforcing the remaining provisions of RVAR on the CFR.

Although ORR is not the safety regulator for CFR, individual experience of rail-borne transport supports the view that the granting of this exemption would not make any difference to the safety of the operation.

By way of mitigation for the absence of a compliant visual and audible passenger information system, it may be possible to use a permanent or seasonal (the stopping pattern depends only on whether it's summer or winter) sign in each end window to provide confirmation of the destination of the approaching vehicle. As the vehicles are captive this would provide a minimal maintenance or operational burden. The exemption request also does not consider mitigation through the provision of signs on the platform of the intermediate station, which may be a simple way of linking the direction of the vehicle with its destination. It is acknowledged that these suggestions provide no benefit once the vehicle has arrived at the station.

Yours sincerely,

Giles Turner
Engineer, Rail Vehicles
Engineering & Asset Management
Railway Planning & Performance Directorate
Office of Rail Regulation

4/8/2011

Dear Mr Bengough,

Cairngorm Funicular Railway - accessibility requirements

Having discussed this with colleagues, we do not envisage any safety implications and have no objections to the exemption(s) or any time constraints.

Kind regards,

Paul Bradley
HM Inspector of Mechanical Engineering (Mines)
Hazardous Installations Directorate
Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH

Dear Mr Bengough,

Cairngorm Funicular Railway - accessibility requirements

Thank you for the courtesy of providing an opportunity to comment.

These two requests appear to be reasonable and I confirm our support.

1) Requiring colour contrasting for a door that is always open when public have access to does appear to be pointless since the opening itself provides the necessary contrast.

2) Requiring a funicular vehicle to display the only destination that is possible does also appear to be pointless.

Hope this is helpful.

Regards

Chris Clark
Rail Accessibility Manager
Rail Directorate
Transport Scotland