

# **THE RAIL VEHICLE ACCESSIBILITY (NON-INTEROPERABLE RAIL SYSTEM) (WATERLOO & CITY LINE) EXEMPTION ORDER 2019**

## **Explanatory Note**

### **What does the Order do?**

1. The Order exempts rail vehicles of the type known as 92 Tube Stock that are operated on the line known as the Waterloo and City Line by London Underground Limited (LUL) from certain requirements under the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 ("RVAR 2010"). The Order is made by the Secretary of State in exercise of powers conferred by sections 183(1), (2), 4(b) and 207(1) and (4) of the Equality Act 2010. The Secretary of State has decided to exercise powers in section 183(4)(b) instead of powers in section 183(4)(a) of the Equality Act 2010 because the Secretary of State thinks it is appropriate to include conditions and time limits on the exemptions. The exemptions, and the conditions imposed on them, are set out below.
2. The exemptions will apply to the vehicles from 1st January 2020 until 2am on 1st January 2025 at the latest.

### **What requirements does this exemption order cover?**

3. This exemption order covers the requirement for flooring at the doorways to contrast with the flooring in the saloon, the requirement for single band of colour on the floor running parallel with the door along its full width, the requirement for vertical handrails adjacent to a door to extend 1200mm above the floor, the requirement for all handrails to have a colour that contrasts with their surroundings, the requirement to have 40mm hand clearance around each handrail, the requirement for destination indicators not to display words in uppercase only, the requirement to make 'next stop' audible announcements when the train is stationary at a platform, the requirement for the priority seat to have a minimum height, the requirement to have wheelchair spaces that comply with the RVAR 2010 and the requirement for handrails not to encroach into the area above the wheelchair spaces.

### **Why has the Order been made?**

4. The 92 Tube Stock vehicles used on the Waterloo & City line will undergo a modification programme to ensure that they are fully compliant with RVAR 2010 by 31<sup>st</sup> December 2024. Until that time, LUL require the vehicles to continue to be used, despite their non-compliance, to ensure the continuous running of the Waterloo & City line service. Accordingly, exemptions are required to allow the vehicles to be lawfully used until they have been modified to achieve compliance.
5. Under RVAR 2010, flooring at doorways must contrast in colour sufficiently with the flooring in the saloon to allow those with sight loss to identify the location of the doors. These trains do not have such flooring.
6. Under RVAR 2010, these trains are required to have a single band of colour on the floor running parallel with the door along its full width to enable those with sight loss to locate the threshold between the train and the platform. These trains do not have such bands. However, the trains' flooring will be made compliant during the modification programme.

7. Under RVAR 2010, the vertical handrails adjacent to a door must extend up to 1200mm above the floor. Although the handrails extend to 1360mm the top section of the handrail curves to follow the profile of the vehicle's roof and so does not meet the requirement to be vertical. The vertical section only extends up to 1135mm above the floor. This will have a very little effect on passengers and any benefit to passengers would not outweigh the cost of modifying the trains. A condition has been added so that the vertical section handrails may not extend up any less than 1135mm above the floor.

8. Under RVAR 2010, the handrails must contrast in colour with their surroundings to make them easily distinguishable. On these trains, the horizontal handrails above the doorways do not contrast sufficiently. These will be replaced during the modification programme.

9. Under RVAR 2010, there must be 40mm hand clearance around the handrails to allow people to grasp them easily. On these trains, the horizontal handrail above the doors only has 35mm clearance between it and the ceiling. It would be possible to lower the handrail by 5mm but the benefit to passengers does not outweigh the increased risk of passengers striking their head on it. A condition has been added so that the handrails may not be modified to reduce the current amount of hand clearance.

10. Under RVAR 2010, LUL are required to announce the name of the next stop whilst the train is stationary at the platform with the doors open to allow those with sight loss to determine the direction in which the train is travelling. However, the Waterloo & City line provides a shuttle service between Bank and Waterloo stations, which makes this information superfluous.

11. Under RVAR 2010, there is a requirement that in order to make the visual display screens easily readable, these trains must not display words in capital letters only. The indicators on the front of these trains display the train's destination in capital letters only. However, they will be replaced with compliant screens during the modification programme.

12. Under RVAR 2010, the minimum height for the base of a priority seat is set at 430mm above the floor to help those who find it difficult to stand from lower heights. The priority seats on these trains are only 410mm above the floor. The difference is thought to have no significant effect on passengers and whilst it would be possible to raise the seat, the benefit to passengers does not outweigh the cost of the modifications required to the seat's structure. A condition has been added so that the priority seats may not be modified to reduce their height below the current level.

13. Under RVAR 2010, these trains are required to have two wheelchair spaces that meet the various requirements for size, location, provision of call-for-aid etc. These trains do not have any wheelchair spaces. However, wheelchair spaces will be created during the modification programme.

14. Under RVAR 2010, any handrail mounted on the ceiling must not protrude into the area above the wheelchair by more than 400mm on a narrow-bodied vehicle such as these so that people using them do not encroach into the wheelchair space when it is in use. There are plans for modification works to install wheelchair spaces. When the wheelchair spaces mentioned above are installed, the existing handrail will protrude into this area by 451mm. Whilst the handrails could be moved

this would bring them into the headspace for standing passengers so overall there is no benefit to offset the cost of modifying the fixing points. A condition has been added so the handrails may not be modified to protrude further into the wheelchair space than they currently do.

### **Why has the exemption been made without being laid before Parliament?**

15. Following amendment of section 183 of the Equality Act 2010 by the Deregulation Act 2015, exemptions can now be made by administrative orders, rather than by statutory instruments. The Order will, however, be notified to Parliament in the Annual Report which the Secretary of State is required to lay before Parliament by section 185 of the Equality Act 2010.

### **Who has been consulted and what did they say?**

16. We consulted the Disabled Persons Transport Advisory Committee (“DPTAC”), the Office of Rail and Road and London Transport Users Committee (“London TravelWatch”) on the exemption request. We also carried out a period of public consultation via our website.

17. ORR did not raise any objection.

18. London TravelWatch did not raise any objection.

19. DPTAC registered its dissatisfaction regarding the ongoing need for exemption from the requirements of RVAR and the relatively short period between the formal consultation taking place and the coming into force of the exemption order; however, they did not raise any specific concerns with the exemptions proposed for this fleet of rail vehicles.

20. No responses were received as part of the public consultation.

21. Consultation responses can be found at Annex A.

### **Is there an impact assessment?**

22. LUL is a wholly-owned subsidiary of Transport Trading Limited, which is in turn a wholly-owned subsidiary of Transport for London. Transport for London is a public body. For deregulatory measures affecting public bodies, no impact assessment is required.

### **Contact**

23. Julia Christie at the Department of Transport: Tel: 07920 504300 or e-mail: [julia.christie@dft.gov.uk](mailto:julia.christie@dft.gov.uk), can answer any queries regarding the order.

## **Annex A – Stakeholder Consultation**

### ***Department for Transport Notes***

*DPTAC issued a joint response to several RVAR exemption order applications and note that some exemptions granted with respect to vehicles on other London Underground Lines will extend up to six years. However, no exemptions granted in the Central Line order will extend any further than 31 December 2024. Additionally, as both Bank and Waterloo stations have step-free access this order makes no exemption on the basis of the Pimlico Principle.*

### **ORR**

Thank you for the opportunity to comment on this exemption application. ORR has no objection to this application on safety grounds, and we do not believe it will affect our ability to use our enforcement powers should it become necessary.

### **London Travel Watch**

Happy to agree to this exemption.

### **DPTAC**

Please find below DPTAC's comments for the RVAR exemption request for London Underground Limited (LUL).

#### **General remarks**

Before our specific comments on this request, we would like to make some general remarks with regard to those rail vehicles that will not be compliant with the relevant TSI or RVAR regulations by the 1st January 2020, as required by those regulations.

It is extremely disappointing that the rail vehicles concerned will not be compliant by the due date, particularly given the length of time that train companies, rolling stock companies and other agencies have had to ensure that they meet the requirements of the PTM-TSI and RVAR regulations. This failure is brought into sharp focus by the majority of rolling stock, which will be compliant, as required, by the 1st January, 2020.

The situation with regard to the majority of dispensation and exemption requests received is exacerbated by the fact that such requests have been submitted little more than three months in advance of the compliance deadline, meaning that little or no remedial work is feasible before the deadline. In such a circumstance the only enforcement action open to the Department for Transport and Office of Rail and Road, as we understand it, is to require operators and owners to remove non-compliant rolling stock from service as from the 1st January. The removal of non-compliant stock could potentially have a serious impact on train services, with detrimental impacts on local economies and rail users, including disabled passengers not affected by the areas of non-compliance, and DPTAC has taken this factor into consideration when commenting on dispensation and exemption requests.

We should further add that the large number of requests submitted so close to the compliance deadline has left us with a very limited time to review and comment on each request, meaning that we have not had the opportunity to inspect vehicles at first hand, or, for the most part, to engage directly with fleet owners or operators.

Finally, we should note that DPTAC's views should not be taken to indicate approval or non-approval of requests received by the Department. DPTAC has no statutory role as an approval body; such authority being vested solely in the Secretary of State.

### **Specific Remarks**

1. Our specific comments on the request from LUL with regard to their vehicles used on the Waterloo and City and Central Line are as follows:

We note that this is a request to apply a targeted compliance approach to the areas listed for the life of the vehicles and LUL are expecting trains to be compliant by 2024. The documentation supplied by the operator makes clear that the rail vehicles concerned are non-compliant with RVAR in multiple areas, including, but not limited to: dimensions of priority seats, next stop announcements, wheelchair compliant spaces, grab rails and grab rails encroaching on the wheelchair space.

2. DPTAC understands the rationale proposed for the 'Pimlico principle' but would strongly reject the 'Pimlico principle' as it has no basis in regulation or law, and is perceived primarily as a self-serving standard, potentially conflating the issues of station access and vehicle access. Disabled people who can carry mobility aids down stairways, perhaps slowly and at their own pace or with support, will still require threshold ramps to board trains. Ramps at stations will also prove hugely beneficial during operational failures when trains terminate unexpectedly, when passengers may be taken ill, if individuals may need to use toilets and in emergency evacuation situations- though it is understood this final remark is outside the remit of RVAR- the importance of such a topic should not be underestimated. Aiming to reduce the discrepancies in the platform train interface benefits many passengers and this is something we would urge the Department to consider when making decisions on this topic.

RVAR clearly stipulates standards and the Pimlico principle would bring in considerations inappropriate in these circumstances.

3. The multiple areas of non-compliance of these vehicles create some barriers to disabled people, particularly those with mobility impairments and visual impairments. Despite this, and despite the extended period for which the fleet will be non-compliant the operator has not put forward any proposed mitigations or any operational mitigation plan to address the inaccessibility of its services during the extensive interim period when work is completed.

4. Should an exemption be granted, then it is essential that the operator fully communicates the areas of non-compliance to disabled people through signage in carriages, its website, online materials, and printed material (including posters) in a range of accessible formats. Staff need to be appropriately briefed to respond to questions from disabled customers and companions. A communication plan along route lines involving local disability groups could be appropriate to cascade relevant information.

5. Physical as well as communicative mitigations should be explored. For example, the operator should consider prioritising wheelchair spaces in accessible

carriages through use of signage, rather than continuing to adopt multi use spaces. Next station information should be available prior to travel in multiple formats.

6. The exemption requests considered do seem to reflect an egregious failure to comply with RVAR, particularly given that LUL is a public body, that has a Public Sector Equality Duty obligation under the Equality Act. However, in line with our observations above in the 'General Remarks' section, we recognise the fundamental importance that the Underground has to the economy of London, and the impact that the withdrawal of services would have on disabled people not affected by the areas of non-compliance associated with these vehicles.

7. The timescales for exemptions extend up to six years. The Department must satisfy itself that this is justifiable. If appropriate, a reduction in timescale could be explored.

8. In all circumstances a strong, robust and monitored mitigation strategy must be applied with monitored compliance. We would suggest regular reporting to IDAG and London Travelwatch to ensure an appropriate dialogue can ensue. As such we would suggest that a pre-condition of any exemption issued by the Secretary of State should be that the operator provides a fully operational mitigation plan.