



Department
for Transport

Handling of Exemptions from Rail Vehicle Accessibility Regulations

Consultation on Proposed Changes

March 2013

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Executive Summary

- i) Trams, underground and metro fleets (but not trains) and heritage & tourist rail vehicles are currently subject to Rail Vehicle Accessibility Regulations (RVAR). RVAR requires them, when built or refurbished, to provide certain items, such as colour contrast, priority seats and public information systems, that improve access for disabled and older people, pregnant women and parents with small children (collectively referred to as PRMs – Persons of Reduced Mobility).
- ii) All rail vehicles, including trains, must be accessible by no later than 1 January 2020. However, where it can be shown that for physical, operational or (sometimes) cost reasons it would not be reasonable for a vehicle to fully meet the requirements of RVAR, then Ministers can grant an exemption from those requirements (either wholly or in part).
- iii) The Government would like to change the way that exemptions from RVAR are granted.**
- iv) Rather than granting exemptions by Statutory Instrument (SI - that is, through a law that is subject to a Parliamentary scrutiny and control process) as now, in future we wish to grant exemptions administratively. This would mean that the process is more like that which already applies when heavy rail (trains), stations and coaches & buses are unable to comply with their own accessibility standards.
- v) There would be no reduction in the strength of argument that would be required before an exemption is granted, and as now, the Department will consult such representative bodies as it considers appropriate.**
- vi) Additionally, Ministers have indicated that they wish to retain final approval of any exemptions and would continue to provide Parliament with an annual report on the exercise of exemption powers, so providing transparency and accountability.**
- vii) By moving to an administrative system, applicants for an exemption would know the result far sooner than now – perhaps in 3 months rather than 6 – 12. This would reduce uncertainty for operators and allow them to introduce vehicles sooner than they might currently feel able to due to the inherent risks and doubts which surround the current system.

viii) Official, legal, Ministerial and Parliamentary time would also be saved – indeed, it is improved efficiency in public administration that would form the main tangible benefit to be gained by the proposed change.

ix) When Parliamentary time allows, the Government would like to amend the Equality Act 2010, under which the current system operates, to facilitate this change in the handling of RVAR exemptions. This consultation paper outlines our proposals in more detail and seeks your comments.

1 How to Respond

1.1 The consultation period runs from 28 March 2013 until 26 April 2013 and responses should be received, or be post marked, no later than the end date. This consultation document has been published on the Department's website and can be found at <https://consultation.dft.gov.uk> or you can contact us using the details below should you wish to request an alternative format.

1.2 Consultation responses should be sent to:

John Bengough
Rail International & Safety Policy
Department for Transport
Zone 3/17
Great Minster House
33 Horseferry Road
London SW1P 4DR

Tel: 020 7944 5035

E-mail: railvehicleaccess@dft.gsi.gov.uk

1.3 If you would prefer to respond to the consultation on-line, it is possible to do so at Citizen Space (see <https://consultation.dft.gov.uk>).

1.4 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of its members were assembled.

1.5 A list of those consulted can be found at **Annex B**. If you have any suggestions of others who may wish to be involved in this process, please pass the information to them or contact us.

1.6 We do not intend to acknowledge individual responses unless by request.

Freedom of Information

1.7 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

1.8 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.9 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

1.10 The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation principles?

1.11 This consultation is being conducted in line with the Government's key consultation principles which are listed below:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

1.12 Further information is available on the Better Regulation Executive's web site at <https://www.gov.uk/government/publications/consultation-principles-guidance>.

1.13 We are carrying out a short (four week) consultation on this proposal, as stakeholders were previously supportive when it was first put forward in 2003. Also, in 2011 the small number of responses to the Equalities Red Tape Challenge that mentioned this subject all urged that the process be simplified.

If you have any comments about the consultation process please contact:

The Consultation Co-ordinator
Department for Transport
Zone 1/14
Great Minster House
33 Horseferry Road
London SW1P 4DR

E-mail: consultation@dft.gsi.gov.uk

What happens next?

1.14 A factual summary of responses, including next steps will be published on the Department's web site within three months of the consultation end date. Paper copies will be available on request.

2 Background

2.1 Mandatory technical standards for the accessibility of rail vehicles were first introduced in 1998 (the Rail Vehicle Accessibility Regulations or RVAR). These applied to all new trains, trams, underground and metro vehicles coming into service in Great Britain after 31 December 1998 and required them to have features making them more accessible to Persons of Reduced Mobility (PRMs). These included, for example, audio-visual Passenger Information Systems, priority seating, colour contrast and wheelchair spaces. The standards were set after extensive consultation and with the agreement of the Disabled Persons Transport Advisory Committee (DPTAC), the Government's statutory advisers on the public passenger transport needs of disabled people.

2.2 Since July 2008, RVAR has been replaced on the main rail network by a similar, Europe-wide standard for train accessibility which builds on the British experience of RVAR. This standard, known as the Technical Specification for Interoperability for Persons of Reduced Mobility (PRM TSI), applies both to new trains and to existing units as they undergo refurbishment.

2.3 The PRM TSI is now the applicable standard for approximately 75% of all rail vehicles in Great Britain. Derogations or dispensations from the PRM TSI are handled administratively by the Department for Transport (DfT), following consultation with DPTAC and others.

2.4 With the consequent reduction in scope of RVAR – to trams, underground, metros and heritage & tourist railways - the DfT took the opportunity in 2008 to update the access standards in light of experience over the past 10 years, and to better fit the requirements to the operating methods of these “non-heavy” rail companies.

2.5 At the same time we made the Office of Rail Regulation (ORR), the independent rail safety regulator, the enforcement authority for RVAR. The ORR is also the enforcement body for all TSIs, including the PRM TSI, thus ensuring consistency of enforcement regimes, and penalties, for accessibility across the industry.

2.6 Over 7,600 rail vehicles are in public transport use which were built or have been fully refurbished to modern access standards. This includes the majority of trams and half of all trains.

2.7 Meanwhile, the law requires all rail vehicles to be accessible by no later than 1 January 2020. Further details can be found on the Department's website at <https://www.gov.uk/government/policies/making-transport-more-accessible-to-all/supporting-pages/accessible-transport-for-all>

3 Exemptions

3.1 The legislation that allows the Secretary of State for Transport to make RVAR - originally the Disability Discrimination Act 1995 (DDA 1995) but now the Equality Act 2010 – also allows him to grant exemptions from RVAR if he thinks it is reasonable to do so – provided he consults DPTAC and others as he thinks appropriate. A significant number of exemptions were granted in 1999-2004 as a lot of new trams and trains were being designed or even built when RVAR first came into force and not all the designs could be modified fast enough to avoid delaying the introduction into service of those vehicles – which were still much more accessible than the rail vehicles they were replacing.

3.2 Since 2004, however, the number of exemptions granted has fallen dramatically as train and tram manufacturers have gained enough experience to design and build fully compliant vehicles (plus trains were no longer subject to RVAR after June 2008).

3.3 Those exemptions that have been granted since 2004 have generally reflected the particular constraints of certain operators (such as London Underground's high capacity/high frequency service) or recognised the inappropriateness of making new heritage and tourist vehicles fully meet RVAR if this destroyed the very ambience that the operator wished to create and which visitors, including PRMs, were seeking to enjoy. A graph showing the number of exemptions granted since 1999 is below.



4 Handling Process

4.1 Operators who wish to seek an exemption prepare their application in accordance with a list of information requirements that is included in another piece of legislation, the Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010 (the Application Regulations). This ensures that all the correct information is submitted at the outset and assists with the timely consideration of the application by DfT.

4.2 Applications are initially considered by officials at DfT who make a recommendation to Ministers on whether the application appears reasonable and should be considered further. Should Ministers agree, then the application is sent to DPTAC and others for comment. Meanwhile, a lawyer at DfT drafts the necessary legislation that will eventually become the exemption order itself and the drafts go through internal checks.

4.3 Depending on who the applicant is, then an Impact Assessment (IA) must also be prepared by officials and checked by economists. This process is designed to ensure that any impacts which the exemption may have if granted are identified, and where necessary, mitigated and is an important part of any legislative development process. IAs are also a key tool in the Government's drive to reduce regulatory burdens and costs on business – under the Coalition's "One In, Two Out" policy, any new burden on business must be balanced by reductions elsewhere, and IAs help quantify this. Prior

to publication, all IAs are also independently assessed by a body of economists known as the Regulatory Policy Committee.

4.4 Applications from public sector organisations – such as London Underground – do not need an IA provided the impact is positive (or if there is a negative impact of less than £5m). As members of the civil society, however, applications from the heritage and tourist sector need an IA, as would any from private sector public transport providers. This is so that the reduction in regulatory burden that is provided for by the exemption is properly recorded within Government. The level of DfT work required to complete such an IA would, however, be proportionate to the scale of the impact expected, as would the level of scrutiny that the IA would receive.

4.5 Once comments from stakeholders have been received, these are put to Ministers along with the draft exemption order, the IA (if there is one) and a recommendation from officials on whether to proceed. If Ministers agree, then the material is sent to cross-Government bodies whose role is to scrutinise all new legislation to make sure it is necessary.

4.6 Once those bodies have given their views, then DfT Ministers consider whether it is appropriate to continue, and to send the exemption order to Parliament for consideration.

4.7 Originally, all exemptions were considered by Parliament under the “negative resolution procedure”. In essence, once laid in Parliament, the exemption order would come into force 21 or more days later unless an MP or Peer objected (in which case a debate would be convened in the relevant House of Parliament to discuss the merits of the exemption).

4.8 This process is a lot more resource intensive, and takes much longer to complete, than the equivalent process for granting equivalent exemptions for accessibility issues at railway stations or for bus and coach vehicles. Further, any changes to existing exemptions (for example, if additional vehicles are added to a fleet) must be made by an amendment exemption which, as an SI, must itself also follow the whole process outlined above.

5 Disability Discrimination Act 2005

5.1 In 2003, the previous Government proposed amending the DDA 1995 so that exemptions from RVAR would be handled administratively. Stakeholders were content with this proposal, provided representatives of PRMs continued to be consulted.

5.2 Parliament was concerned however – particularly in light of the number of exemption orders that had been made up to that time – and felt that it ought to give greater scrutiny to certain applications in order to ensure that PRMs were not being disadvantaged.

5.3 As a result, the DDA 2005 amended the DDA 1995 so that, while certain exemptions would continue to be considered by the “negative resolution procedure” described above, more significant exemptions would be considered under the “draft affirmative resolution procedure”. This latter process involves Ministers placing a draft exemption order before Parliament and presenting the arguments before two specially-convened committees of the House of Commons and the House of Lords. The committees must both debate the merits of an exemption and both Houses must have approved it before it can come into force.

5.4 Although the Secretary of State retains discretion as to which Parliamentary procedure to use, the factors he must consider when making that decision are set out in the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 (the Parliamentary Procedures Regulations).

6 Red Tape Challenge

6.1 The Red Tape Challenge (RTC) is an initiative launched by the Prime Minister in 2011 as part of the Government’s project to review the total stock of the regulations in force in Great Britain. Government sets out which legislation has been made under various sectors (for example, Equalities or Rail) and invites comments from business, the civil sector and individuals on whether these should be improved or removed.

6.2 The Equalities RTC, which considered measures in the Equality Act 2010, took place during 2011. With Ministerial agreement, the DfT once again proposed that the manner of granting exemptions from RVAR should be

simplified – particularly now that the scope of RVAR had been reduced by three quarters with its replacement on heavy rail by the PRM TSI.

6.3 Granting exemptions by SI for operators of trams, underground, metro and heritage & tourist railways was felt to be even less proportionate given that dispensations for stations, buses & coaches and now even trains were handled administratively.

6.4 A very small number of comments about the RVAR exemption process were received during the Equalities RTC. These unanimously highlighted how unnecessarily complicated and disproportionate the current procedures are.

7 Proposal

7.1 When Parliamentary time allows, the Government would like to amend the Equality Act 2010 so that future exemptions from RVAR can be granted administratively rather than by SI, as now.

7.2 There would be no reduction in the strength of argument that would be required before an exemption is granted. Indeed, applications will continue to be published on the Government's website, as will details of any exemptions that are granted.

7.3 As required by the Equality Act 2010, the Department will, before giving an exemption, consult such representative bodies as it considers appropriate.

Future of DPTAC

DPTAC is included in the list of bodies in Schedule 1 to the Public Bodies Act 2011. Bodies in the list may be abolished by order made under section 1 of that Act.

A consultation on the abolition of DPTAC closed on 24 September 2012, but no order has yet been made under section 1 in relation to DPTAC.

Should an order be made, it would probably amend the Equality Act 2010 to remove the mandatory requirement to consult DPTAC when someone is seeking an exemption from RVAR, but the requirement to consult such "persons as the Secretary of State thinks appropriate" would remain.

However, should DPTAC be abolished the Department is likely to state that its policy will be to consult appropriate representative bodies of disabled persons in cases where it would have previously consulted DPTAC.

7.4 Ministers have also indicated that they wish to retain final approval of RVAR exemptions. Further, they also wish to retain the requirement in the Equality Act 2010 for the Department to send to Parliament an Annual Report on its use of the RVAR exemption powers, so that Parliament can consider whether this is appropriate.

Potential process in future

On receipt of an application, officials would consult representatives of PRMs, and other organisations such as the ORR and Passenger Focus. They would also publish the application on the Department's website for anyone to comment on. If the merits of the application appear strong, officials would prepare an exemption (which would not be an SI) using a standard template.

If needed, officials would also prepare an Impact Assessment, and have this approved by colleagues.

The exemption (and IA if required) would then be presented to Ministers, along with comments from consultees, along with a recommendation on whether the exemption should be granted or not.

Once Ministers had taken their decision, the applicant and consultees would be notified and the outcomes would be placed on the website – including a copy of the exemption if that had been approved.

The granting of that exemption would be included in the Annual Report to Parliament on Ministers' use of the exemption powers.

7.5 Should this proposal go ahead, the Parliamentary Procedures Regulations would become redundant, and so, at the same time, we would seek powers to revoke them.

7.6 Further, the Department believes that setting out the information required for each application in the Application Regulations is excessive. A list of information requirements could instead be placed on the Government's website. Accordingly, we are also proposing to amend the Equality Act 2010

so that these requirements are not prescribed in regulations. At the same time, we would seek powers to revoke the Application Regulations.

7.7 Should we be granted powers to revoke the Parliamentary Procedures and Application Regulations, it is our intention to do so as soon as practicable.

We wish to hear your views on these proposals.

8 List of questions

Question 1:

Should the Equality Act 2010 be amended so that exemptions from RVAR are granted administratively, rather than by Statutory Instrument?

Question 2:

Should the Equality Act 2010 be amended so that the information required in each application for exemption is no longer prescribed in regulations?

Annex A – Glossary

Application Regulations – Rail Vehicle Accessibility (Applications for Exemption Orders) Regulations 2010

DDA – Disability Discrimination Act

DfT – Department for Transport

DPTAC – Disabled Persons Transport Advisory Committee

FOIA – Freedom of Information Act

IA – Impact Assessment

ORR – Office of Rail Regulation

Parliamentary Procedures Regulations – Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008

PRMs – Persons of Reduced Mobility

PRM TSI – Technical Specification of Interoperability for Persons with Reduced Mobility

RTC – Red Tape Challenge

RVAR – Rail Vehicle Accessibility Regulations

SI – Statutory Instrument

Annex B – List of Consultees

Edinburgh Trams	Alstom
Glasgow Subway	CAF
Nexus	Stadler
DB Nexus	Siemens
Blackpool trams	Heritage Rail Association
	Confederation of Passenger
Transport for Greater Manchester	Transport
Manchester Metrolink	DPTAC
South Yorkshire Passenger	Mobility & Access Committee
Transport Executive	Scotland
Sheffield Supertram	Leonard Cheshire
Nottingham Council	Office of Rail Regulation
	Equality & Human Rights
Tramlink Nottingham	Commission
Centro	Passenger Focus
Midland Metro	London TravelWatch
London Underground	Parry People Movers
Docklands Light Railway	Ultra
Croydon Tramlink	Tram Power
	Guide Dogs for the Blind
Heathrow	Association
Birmingham Airport	Now Age UK
Birmingham airport owner	JCMBPS (Guide Dogs UK)
	Joint Committee on the Mobility
Stansted airport owner	of Disabled People
Gatwick airport owner	Royal Mail Museum
	Passenger Transport Executive
Bombardier	Group
Glasgow Subway	RADAR
RNID Scotland	RNIB
Transport Scotland	RNIB Scotland
Transport Wales	RNID
DRDNI	RNID Cymru
Action with Rural Communities in	
England	Rural Services Network