

# **THE RAIL VEHICLE ACCESSIBILITY (NON-INTEROPERABLE RAIL SYSTEM) (REPLICA PICKERING BRAKE COMPOSITE COACH) EXEMPTION ORDER 2021**

## **Explanatory Note**

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

1. The Order exempts a rail vehicle operated by Welsh Highland Railway Limited (“WHR”) from certain requirements of 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), (5) and (7) and 207(1) and (4) of the Equality Act 2010. The Order is being made in exercise of the Secretary of States power in section 183(4)(a) as the Order is being made in the terms of the application for the order.

### **What requirements does this Order cover?**

2. This Order covers exemptions for the aspects of the vehicle’s heritage design which do not meet modern accessibility standards. These relate to the contrast between the passenger doorway door and the exterior of vehicle, audible warning devices for external passenger doorways, signage on wheelchair doorways, audible and visual passenger information announcements, priority seats for disabled persons in the vehicle, illumination around steps at, and on the floor of, passenger doorways.

3. This exemption applies to the newly built replica 1900s ‘Pickering Brake’ passenger coach which entered service in 2021.

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

4. Although WHR has adapted the original vehicle layout to achieve compliance with some of the RVAR 2010 requirements, notably taking wider consideration of wheelchair users by introducing access and accommodation for wheelchair users, full compliance was impracticable for this vehicle.

5. Under RVAR 2010, this vehicle is required to have features that contrast in character and function to its representation as a replica heritage vehicle. The vehicle is constructed from timber and recreates interiors of early 20<sup>th</sup> Century. This includes bench seating, slam doors and a traditional livery.

6. The vehicle will be operated for heritage and touristic purposes only. The Railway is promoted to visitors as leisure travel, and to this end the guard’s duties include welcoming passengers and assisting them to board and alight.

7. RVAR standards are primarily intended to facilitate independent travel on public transport and as a result the use of exemptions for some aspects of the design of the Pickering Brake passenger vehicle recognises the balance to be achieved to make a heritage vehicle experience inclusive, whilst recreating an authentic replica.

8. The vehicle does not meet the following standards and requirements at Part 1 of Schedule 1 to RVAR 2010:

- (a) paragraph 3(1) (contrast between passenger doorway door and exterior of vehicle);

- (b) paragraph 3(3) (external passenger doorway audible warning devices);
  - (c) paragraphs 3(5)(a) (audible sound when doors become openable by passengers);
  - (d) paragraphs 3(5)(b) (audible warning before door closes);
  - (e) paragraph 6(3) (specified disabled sign outside wheelchair-compatible doorway);
  - (f) paragraph 10(1)(a) (handrail on the inside as close as practicable to, and on either side of, the passenger doorways)
  - (g) paragraph 11(1) (public address system for audible and visual passenger information announcements);
  - (h) paragraph 11(2) (external public address system for visual announcements on vehicle haulage locomotives);
  - (i) paragraph 11(5) (passenger information when vehicle is stationary);
  - (j) paragraph 11(6) (mandatory announcements from public address systems inside vehicle);
  - (k) paragraph 11(8) (dimension and contrast requirements of visual announcement displays on vehicle exterior);
  - (l) paragraph 11(10) (percentage of passengers able to view passenger information display from seated position);
  - (m) paragraph 11(12) (dimension and contrast requirements of visual announcement displays inside vehicle);
  - (n) paragraph 13(1) (prescribed proportion of priority seats for disabled persons in vehicle);
  - (o) paragraph 13(6) (mandatory sign marking priority seats for disabled persons);
  - (p) paragraph 14(1)(e) (illumination around steps for use of passengers at external passenger doorways); and
- paragraph 3 of Part 2 of Schedule 1 to RVAR 2010 (illumination on floor of external passenger doorway).

### **What Mitigations are in place for non-compliance?**

9. Mitigations for non-compliance are as follows:

The Welsh Highland Heritage Railway operates a seasonal service, generally from Easter to October. Normal services operate during the day and therefore during the hours of daylight. On occasions where trains are operated after dark, such as Halloween and Christmas specials, platforms are lit and additional staff are deployed to guide and assist passengers. The Railway is promoted to visitors as an experience, and to this end the guard's duties include welcoming passengers and assisting them to board and alight, including wheelchair users, opening the double doors and deploying the ramp. The Guard passes along the platform at the one intermediate station, announcing the stop and assisting passengers to alight. Station

nameboards are provided at each station, which can easily be read from the train as the train travels slowly.

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

10. Following the amendment of section 183 of the Equality Act 2010 by the Deregulation Act 2015, which inserted paragraph (7), 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.

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

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

12. DPTAC responded to the consultation to note that both the heritage nature of the vehicle and its operation on a narrow gauge network created significant challenges in terms of meeting modern accessibility requirements. It welcomed the incorporation of an accessible compartment able to accommodate wheelchair-using disabled passengers, noting that the close proximity of the guard’s compartment would allow for the provision of assistance (including emergency assistance) during train journeys and stated that the mitigations for each of the exemptions seemed in general to be sensible and practical. DPTAC also suggested that as a condition of any exemption granted, WHR should be required to monitor its provision of accessibility, including any issues arising from use of its new vehicle, and implement any required changes or improvements highlighted by its monitoring.

13. We note DPTAC’s view that the exemption should include conditions requiring the ongoing monitoring of the general accessibility of the rail services it provides. However, since RVAR standards relate to the physical design of a rail vehicle, the monitoring of the quality of passenger experience is not a requirement within the regulations and there is not scope to place such conditions on WHR through this Order.

14. ORR did not raise any objection.

Comments concerning verbal communication through the doors between the wheelchair accessible compartment and the guard’s compartment have been addressed by WHR undertaking to fit a passenger communication device.

15. ORR also commented that all parties should be reminded that exemption from any accessibility requirement does not constitute an exemption from the statutory requirement to reduce risks so far as is reasonably practicable. This reminder is included in this published Explanatory Note for this purpose.

16. Transport Focus responded to the consultation welcoming accommodation for wheelchair users and querying whether mobility scooters could also be accommodated. Mobility scooters, however, are outside the scope of RVAR.

17. There were two responses during the public consultation. These were both supportive, one without comment, the other suggesting a requirement for a simple easy way of securing wheelchairs. We have shared this feedback with the applicant.

18. The full consultation responses can be found at Annex A.

**Is there an impact assessment?**

19. A full published impact assessment has not been undertaken due to the small nature of the impacts. This Exemption Order will enable a historic narrow-gauge railway passenger vehicle to be put in to service for the benefit of those who use it and will not impose any costs on the Welsh Highland Railway Limited.

**Contact**

20. Philip Hunt at the Department of Transport: Tel: 07812 483546 or e-mail: [philip.hunt@dft.gov.uk](mailto:philip.hunt@dft.gov.uk), can answer any queries regarding the Order.

## **Annex A – Stakeholder Consultation**

### **DPTAC**

11 January 2021

Thank you for passing on this application to DPTAC for review. I have set out our comments below.

This is an unusual application in that it applies to a single rail vehicle, which will be used exclusively on a narrow gauge heritage railway (the Welsh Highland Railway ('WHR')), and which is a replica of a vehicle that was used on the same infrastructure during the early part of the 20th century. Both the heritage nature of the vehicle in question and the fact that it will operate on a narrow gauge network create some significant challenges in terms of meeting modern accessibility requirements. It is to the Welsh Highland Railway's credit, therefore, that they have been able to incorporate an accessible compartment into the new vehicle that will be able to accommodate wheelchair-using disabled passengers. Considerable thought has clearly been devoted to the design of this space, and we noted that the close proximity of the guard's compartment, which will be directly accessible from the wheelchair compartment, will allow for the provision of assistance (including emergency assistance) during train journeys. We also noted the very limited nature of the rail network operated by the WHR and the availability of staff throughout the train journey to provide assistance.

Given the limitations inherent in a rail vehicle of this type, and notwithstanding the effort made to make it accessible as possible, it is unsurprising that a number of exemptions from RVAR are being requested. The operator has provided mitigations for each of these exemptions, which in general seem sensible and practical. In addition, we offer the following suggestions, which the operator may wish to consider:

- (1) It would be helpful for the WHR to provide a facility for disabled passengers to notify them in advance if they need assistance. Whilst many disabled passengers would be happy to use the WHR on a 'turn up and go' basis, seeking assistance on the day as necessary, others may find the opportunity to pre-arrange assistance helpful;
- (2) If not already in existence, it may be helpful for the WHR to display signs at their stations (and/or via announcements through their PA system) advising disabled passengers to ask staff to provide assistance if required. It may also be helpful to use a portable sign on platforms to indicate the location of the accessible compartment in the new vehicle;
- (3) It would be useful for the WHR to facilitate feedback from disabled passengers on their experience of using the railway in order that they are able to continue to improve their service from an accessibility perspective;
- (4) The WHR's website (and other forms of communications such as passenger leaflets) needs to provide information on the new vehicle as well as relevant information on mitigations. In this context, we have noted that the WHR's website already carries quite a lot of information for disabled passengers (and was written in a positive and welcoming tone), but is primarily focussed on passengers with mobility impairments. Although going a little beyond the subject matter of this application, it

would be helpful if the website could make clear that the WHR welcomed passengers with any form of disability (visible or non-visible). It would also be useful for the website to refer to any disability awareness training received by staff, and provide more information on ticket purchase from an accessibility perspective. Finally, given the important role played by verbal communication in the WHR's operations, it would also be sensible to provide some specific information for deaf and hearing-impaired passengers;

(5) We would suggest that the Department requires, as a condition of any exemption granted, that the WHR continues to monitor its provision of accessibility, including any issues arising from use of its new vehicle, and implements any required changes or improvements highlighted by its monitoring. In this context, it may be useful for the WHR to collaborate with other heritage railway operators to share experiences and to ensure that 'best practice' approaches are disseminated to and adopted by other operators as quickly as possible.

## **ORR**

7 January 2021

Thank you for the opportunity to comment on the Welsh Highland Railway's request for exemption from a number of clauses of The Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 applicable to the new Replica Pickering Brake Composite Coach.

We have no objections to the proposed exemptions on the grounds of safety, and have not identified restrictions on our ability to use our regulatory powers where necessary. However, all parties should be reminded that exemption from any accessibility requirement does not constitute an exemption from the statutory requirement to reduce risks so far as is reasonably practicable.

We note that the request asserts that verbal communication through the doors between the wheelchair accessible compartment and the guard's compartment meets the requirement to fit a device which enables a disabled person in a wheelchair to communicate with a person who is in a position to take appropriate action in an emergency. We further note that the doors through which this communication is expected to take place are also required to be securely fastened in order to provide the required fitting capable of preventing a wheelchair from moving or tipping towards the fitting. While these requirements do not form part of the exemption, we are interested in how the proposed solution will achieve compliance with these requirements and we will take this up with the Railway.

## **Transport Focus**

30 December 2020

Thanks for the below opportunity to comment on the derogation request from the Welsh Highland Railway (WHR).

Given the reasons for the construction of the replica carriage, and the heritage nature of the railway we think that the exemptions being requested are reasonable when considered alongside the mitigations that are being put in place. It is good to see that accommodation for wheelchair users is now being provided within a heritage design. It's not entirely clear whether this means scooters can also be

accommodated; if so, it would be helpful for WHR to say this on their website once the carriage comes into service.

Having looked at the Welsh Highland Railway application, and their website, there appears to be an emphasis placed on the needs of passengers with visible mobility impairments. Whilst we are sure this is unintentional and that staff and volunteers would likely be quick to offer assistance to anyone who asks, we'd like to suggest that WHR consider how those with other (perhaps non-visible) impairments could find out what assistance/facilities are available in advance of their visit. And whether WHR recognises the sunflower lanyard scheme and advises staff and volunteers about how best to provide help to those who might need it. We realise that might fall outside the terms of the exemption application, but hope it's a helpful suggestion.

## **Public response(s)**

### **Paul Trevena**

9 January 2021

My comments on the RVAR exemption: Welsh Highland Railway 1900s coach replica.

I am a keen supporter of steam railways in the UK. I have unfortunately suffered from a number of injuries to my feet and legs following a car accident in 2014.

I have spent time on crutches and had to use a wheelchair from time to time.

1. I think it's great that coach replicas are being introduced and that the railway is trying to make the look and feel of the historic vehicles appropriate whilst trying to be as inclusive as possible.
2. The requirements of a slower moving heritage train should clearly not be the same as a mainline high speed railway.
3. The human aspect must be taken into account here, from my experience the railway has excellent staff who go out of their way to make all visitors both welcome and comfortable. Staff will obviously be trained to operate the doors, ramps and there should be no need for specific modern signage or a sound system.
4. I feel the only special requirement should be a simple easy way of securing wheelchairs (no fuss).

### **C J L Yewlett**

15 December 2020

I wish to support this request for exemption. It seems an entirely reasonable attempt to secure the objective of ensuring the physically disabled can enjoy the pleasures of heritage rail travel without undermining the heritage aspects which would attract participation in the first place.