

**This explanatory memorandum is laid before Parliament by Command of Her Majesty.**

**1. i) Title of instrument:** The Rail Vehicle Accessibility (Hull Trains Class 170/3) Exemption Order 2004 (S.I. 2004/1410)

**ii) Laying authority and Purpose:** This instrument is made under powers conferred in section 47 of the Disability Discrimination Act 1995 and laid pursuant to the provisions of section 67 of that Act. It is subject to annulment in pursuance of a resolution of either House of Parliament.

**iii) Department responsible:** Department for Transport.

**2. Description**

This Order exempts certain specified new rail vehicles, which have been built for use by Hull Trains Limited, from two requirements of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The Order sets a condition and expiry dates.

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

None

**4. Legislative background**

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 designed or adapted for passenger use, and first brought into use after 31<sup>st</sup> December 1998.

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. Since these regulations came into force, more than 50 such exemption orders have been made.

The application for this exemption Order was made because the vehicles do not comply with two of the requirements of the Regulations. The first is that, due to an oversight at the design stage, three priority seats specially designated for use by disabled persons in 1<sup>st</sup> Class are 30 millimeters higher from the floor than is permitted by the regulations. This is considered to be relatively minor and we do not anticipate that it will prevent the vast majority of disabled people from being able to use the seats. The second area of non-

compliance is that the safety requirements for the nappy-changing table, which is situated in the wheelchair accessible toilet, mean that more force than is permitted by the Regulations is needed to deploy it. When stowing the table, the force requirements are met. This enables the wheelchair user to move the table out of the way if it causes an obstruction. In mitigation, industry argue 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**

This Instrument applies to Great Britain as a whole although, in practice, it applies only to the specified vehicles and will cease to have effect if those vehicles are used by a person other than Hull Trains Company Ltd., unless the Secretary of State has been given written notice in advance specifying the name and address of that other person.

## **6. European Convention on Human Rights**

In my view the provisions of this Instrument are compatible with Convention Rights.

## **7. Policy background**

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 Secretary of State has decided to grant the application, although the exemption relating to the priority seats has only been granted for two years, after which time the vehicles will need to comply. The nappy-changing table is an additional and relatively newly designed 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. On this basis, the Secretary of State has decided to grant the application.

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. 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. DPTAC has been consulted on this application, and supplied comments. We have also consulted Her Majesty's Railway Inspectorate

(HMRI), the Strategic Rail Authority and the Office of the Rail Regulator. Having taken the comments made by the consultees into account, the Secretary of State has decided to grant the exemptions for the periods shown in the Order.

## **8. Financial impact**

The only potential financial impact was for the operator who, if the exemptions had not been granted, would have had to delay the entry into service of the vehicles and carry out structural alterations to the vehicles to make them RVAR compliant. As no other organisations are affected, a Regulatory Impact Assessment has not been prepared.

## **Contact details**

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