EXPLANATORY MEMORANDUM TO

THE RAIL VEHICLE ACCESSIBILITY (NETWORKS) EXEMPTION ORDER 2009

2009 No.

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

2. Purpose of the Instrument

2.1 The Order exempts all heritage or tourist rail vehicles first brought into use before 1 January 1999 and used on a specified railway or tramway network or in a depot forming part of other networks, or any rail vehicle used on a "miscellaneous network", from the requirement to comply with rail vehicle accessibility regulations made under section 46(1) of the Disability Discrimination Act ("DDA") 1995. It also authorises rail vehicles covered by the exemption to be used on non-exempt networks on not more than a total of 20 "traffic" days per calendar year per vehicle.

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

3.1 The draft affirmative resolution procedure has been chosen for consideration of the Order in accordance with the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 (S.I. 2008/2975). These Regulations set out the basis on which the Secretary of State will decide which Parliamentary procedure is to be followed when making an Order under section 47(1) of the DDA 1995.

3.2 The Disabled Persons Transport Advisory Committee[1] ("DPTAC") have been consulted in accordance with section 67A(1) of the DDA 1995 and agree that the use of the draft affirmative resolution procedure is appropriate in this instance.

4. Legislative Context

4.1 Section 46 of the DDA 1995 enables the Secretary of State to make regulations ensuring that all new rail vehicles are accessible to disabled people. The Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456) ("RVAR") have applied to all new rail vehicles since 31 December 1998.

4.2 Section 47 of the DDA 1995 enables the Secretary of State to make an Order (an "exemption order") to allow specified rail vehicles which do not fully comply with the requirements of rail vehicle accessibility regulations ("RVA Regulations") to enter into service. Such Orders usually contain conditions and set time limits for rectification of non-compliances. A full list of all exemption orders which have been granted and their provisions is posted on the Department for Transport's web site[2].

---

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

[2] See www.dft.gov.uk/transportforyou/access/rail/vehicles/eo.

4.3 The DDA 2005 amended section 47 of the DDA 1995 to clarify and extend the scope of the power under that section. The revised powers enable the Secretary of State to make an order (a "network exemption order") to exempt rail vehicles used on a particular railway, for example a heritage railway, from some or all of the requirements of RVAR.

4.4 Section 6 of the DDA 2005 (once in force) will replace the definition of "rail vehicle" in section 46 of the DDA 1995 to remove the "start date" it contained, thereby enabling access requirements to be applied to rail vehicles first brought into use before 1 January 1999[3]. The DDA 2005 amendments will also require the setting of an "end date" (of not later than 1 January 2020) by which time all rail vehicles must be accessible unless covered by an exemption order. Both provisions were included in the DDA 2005 in response to recommendations made by the Disability Rights Task Force[4] ("DRTF").

4.5 The Government intends to bring these provisions into force with the same commencement date as the Order. The Government also intends to bring into force on the same date the proposed package of regulations, including new RVA Regulations, explained in its consultation document published on 8 April 2009 (Consultation on Improving Accessibility of light Rail Vehicles). The consultation closed on 3 July 2009[5] and the package of regulations will include any changes made resulting from that exercise.

4.6 Just as the change in the definition of "rail vehicle" will make older rail vehicles used to provide public transport services subject to RVA Regulations, so older rail vehicles used on heritage and tourist networks will similarly be brought into scope. However, due to the nature of their operations and the experience they are intended to recreate as well as the engineering constraints presented by the rail vehicles operated, the Government does not believe the application of technical accessibility standards would be appropriate.

4.7 The Order therefore exempts rail vehicles which were brought into use prior to 1 January 1999, i.e. prior to the introduction of RVAR, used to demonstrate or operate a historical or special type of transport service and used primarily for tourist, educational or recreational purposes and operated on specified heritage and tourist railways and tramways from complying with the requirements of RVA Regulations. A list of the networks to which the Order will apply is included in the Schedule. For the same reasons, the Order also exempts any rail vehicles introduced into service prior to 1 January 1999 from the requirement to comply with RVA Regulations if they are operated for carriage within the confines of a railway depot regardless of whether these are part of exempt, or non-exempt networks.

4.8 Applicable vehicles will, additionally, each be allowed to operate on a non-exempt network on a maximum of 20 traffic days per calendar year if they were used in the preceding 12 months as tourist or heritage vehicles on exempt networks or depots

[3] These amendments will take effect once section 6(2) of the DDA 2005 is commenced. Regulation 3(2)(b) of the Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008 (see **paragraph 4.11**) has further amended the definition of "rail vehicle" for the purposes of the DDA 2005 to explicitly exclude those rail vehicles operated on the high-speed rail system or the conventional trans-European network rail system.

[4] The DRTF was established by the Government in 1997 to consider how best to deliver its Manifesto commitment to provide comprehensive and enforceable civil rights to disabled people.

[5] See www.dft.gov.uk/consultations/closed/rvarconsul.

covered by the Order. A "traffic day" covers operation from 3am to 3am in recognition of the service patterns operated on some non-exempt networks. Should an operator wish to exceed these 20 days a separate, vehicle-specific, exemption order will be required. The 20 days authorisation for operation on non-exempt networks will also apply if a vehicle has come from a museum demonstrating historical rail vehicles, or direct from restoration and arrangements are in place for it to be displayed at such a museum or for it to be used on a tourist or heritage network or in a depot covered by the Order.

4.9 The Order also exempts rail vehicles of any age used on specified "miscellaneous networks" from the requirements of RVA Regulations. It would not be appropriate to apply RVA Regulations to rail vehicles used, for example, in industrial undertakings or as fairground equipment. Article 4(3) of the Order defines the miscellaneous networks to which the exemption will apply.

4.10 In accordance with the provisions of the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 (S.I. 2008/2975), the Order will be considered under the draft affirmative resolution procedure.

4.11 It should be noted that, following the introduction of new European standards (the Technical Specification of Interoperability for Persons with Reduced Mobility or "PRM TSI") on 1 July 2008, previously RVAR-regulated heavy rail vehicles operated on the Trans-European Network[6] have been removed from the scope of RVA Regulations and Part V of the DDA 1995. The Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008 (S.I. 2008/1746)[7], which came into force on 7 July 2008, were required to facilitate the introduction of the PRM TSI and prevent simultaneous regulation by domestic and European accessibility regimes. These Regulations, which were themselves subject to the draft affirmative resolution procedure, also set the "end date", by which time all heavy rail vehicles used on the Trans-European Network must be accessible, at 1 January 2020.

4.12 RVA Regulations remain as the accessibility standard going forward for rail vehicles used on light rail, metro, underground and tram systems and prescribed modes of guided transport as well as heavy rail vehicles, such as those operated on the heritage and tourist railways and tramways covered in the Order, which were introduced after 31 December 1999.

5. Territorial Extent and Application

5.1 This Order applies to Great Britain only. Northern Ireland has its own rail vehicle accessibility legislation.

6. European Convention on Human Rights

Chris Mole has made the following statement regarding Human Rights:

In my view the provisions of the Rail Vehicle Accessibility (Networks) Exemption Order 2009 are compatible with the Convention rights.

---

[6] The scope of the Trans-European Network is explained at www.dft.gov.uk/pgr/rail/interoperabilityandstandards/interoperascope. It comprises approximately 70 per cent of the UK mainline network.

[7] See www.opsi.gov.uk/si/si2008/pdf/uksi_20081746_en.pdf.

7. Policy Background

7.1 There are issues on the rail vehicles operated by most heritage and tourist railways and tramways which make it inappropriate to require them to comply fully with the technical accessibility standards in RVA Regulations. In most cases, compliance would require major and costly engineering work and, in some circumstances, may be impossible. For example, several heritage operations use a small, 15 inch, track gauge which makes it difficult to meet the dimensions set out in RVA Regulations for requirements such as wheelchair spaces and throughways within the vehicles. In addition, most heritage rail vehicles do not have the electrical connections between vehicles which are needed to provide fittings such as passenger information systems. Controls, such as compartment door handles, often require greater forces to operate them than specified, for safety reasons. Older liveries were also not designed with accessibility in mind and therefore rarely provide a contrast between the doors and bodysides, one of the most basic provisions of the RVA Regulations.

7.2 Requiring compliance would adversely affect the ambiance of heritage operations which is an important aspect of their purpose of recreating railway and tramway operations from the past. The Government has no desire to destroy the country's rail heritage particularly as many heritage and tourist operators already understand the value of improving access to their services given the likely demographics of their clientele. Indeed, increased levels of staffing on such networks can often act to ameliorate the effect of non-compliances such as a lack of contrast on doors. The Order does not change the policy which has been in place for over a decade whereby rail vehicles introduced into service prior to 1 January 1999 (i.e. before rail vehicle accessibility legislation was first applied) were not subject to the requirement to comply.

7.3 However, heritage and tourist rail vehicles that are usually based on a preserved or tourist line are occasionally operated on non-exempt networks as part of a rail tour or excursion. Without additional provision, heritage and tourist rail vehicles used occasionally to provide services on a network which is not exempt would be operating unlawfully on that network if they were not made more accessible during refurbishment or by the end date. The Order therefore provides flexibility by allowing operators to run their vehicles on a non-exempt network, such as Blackpool Tramway, for a maximum of 20 traffic days each in any calendar year.

7.4 The Order requires these vehicles to have been used in service on a specified network at some point within the preceding twelve months to ensure that their main purpose is providing heritage or tourist services. However, in recognition of the fact that some railway museums have serviceable vehicles, but not necessarily their own networks, an exemption from this requirement has been included as well as for newly restored vehicles. In all cases, the 20 traffic day limit would apply to ensure that inaccessible rail vehicles are not operated on non-exempt networks, which are generally those which primarily provide a public transport service, for significant periods as this would disadvantage disabled passengers. The limit is in line with a similar provision for older buses and coaches in Regulation 4(1)(f) of the Public Service Vehicle Accessibility Regulations 2000 (S.I. 2000/1970) and applies to individual vehicles rather than the network on which they are operated. No time limit is applied to the operation of vehicles covered by the exemption on those networks listed in the Order – so there is no limitation on the mutual exchange and use of vehicles between exempt networks.

7.5 For operators wishing to operate heritage or tourist vehicles on a non-exempt network for longer than 20 days, the Government believes it would be appropriate for an application for a vehicle-specific exemption order to be made. Such services are clearly beyond the limited scope of the tourist, educational or recreational purposes envisaged by the Order and need to be reviewed in light of legislative commitments to ensure that all rail vehicles are accessible by no later than 1 January 2020. That process will enable consideration to be given on a case-by-case basis of the potentially greater impact on disabled people of non-compliances and allow these to be viewed in the context of the type of services being offered.

7.6 Where a new rail vehicle (i.e. one which has been introduced into service after 31 December 1998) is being built to be operated on a network which is otherwise exempt by virtue of the Order, the Department believes it is appropriate for operators to consider accessibility at the planning and design stage. Disabled people have a legitimate expectation that any new rail vehicle should make some provision for their needs and the Department has worked successfully with a number of heritage and tourist operators to make such vehicles as accessible as possible whilst having regard to the atmosphere they wish to create and the resource constraints such networks usually operate under. The Order therefore maintains the current requirement, in place since 1998, for new vehicles introduced since 1 January 1999 to meet RVA Regulations. Where it is not possible, or desirable, for new vehicles to comply fully with accessibility standards, operators will be able to apply for a vehicle-specific exemption order.

7.7 Some heritage and tourist networks listed within the Order already operate rail vehicles which have been introduced into service since RVAR came into force in 1998. Many of these were unable to fully comply with the technical accessibility standards in RVAR and already have vehicle-specific exemption orders in place. To the extent that the Order does not apply to such rail vehicles, operators will be required to continue to comply with any conditions stipulated within the extant vehicle exemption order.

7.8 Miniature railways (i.e. those with a gauge smaller than 350mm) are not subject to RVA Regulations and the Government does not intend to change this with new RVAR (see **paragraph 4.4**). This definition of "miniature railway" is in line with that used in safety legislation and ensures consistency across regulatory regimes.

7.9 The Order also exempts vehicles of any age which are used on specified "miscellaneous networks". Many of these are for industrial purposes, such as those forming part of a mine or quarry, or used for engineering or building works. Private networks situated within the grounds of a dwelling house are also exempted by the Order. Fairground rides and equipment which would otherwise be caught by the definition of "rail vehicle" are also exempted from RVAR where they are provided solely for entertainment purposes rather than to move visitors around a site.

8. Consultation Outcome

8.1 Given the nature of the Order and the number of networks covered, an eight week consultation exercise was held[8]. The consultation, which was completed on 5 June 2009 and included a draft of the Order, was distributed to over 250 stakeholders including all the individual networks covered and DPTAC. 49 responses were received (of which 84

[8] See www.dft.gov.uk/consultations/closed/railvehicleaccess.

per cent were from heritage and tourist operators and 16 per cent from other organisations).

8.2 Although comments on any aspect of the Order were sought, and operators in particular were asked to confirm that the entry for their network listed in the Schedule was correct or whether any networks were missing from the list, the consultation asked only one specific question and this is reproduced in bold below together with a summary of the responses received. Respondents also highlighted a number of other issues and these are also summarised below together with the Government's response.

Question: Do you agree that operation of a heritage or tourist rail vehicle on a non-exempt network should be limited to a maximum of 20 days in any calendar year?

8.3 The Government recognises that many heritage and tourist operators sometimes wish to operate their vehicles for events and tours on non-exempt networks from time to time. However, it would be inappropriate for inaccessible rail vehicles to provide mainstream public transport services and a condition has therefore been added to the Order to restrict such operation to a maximum number of days per calendar year per vehicle. This was initially set for the purposes of consultation at 20 days, which is consistent with similar provisions in place for older buses and coaches under the Public Service Vehicles Accessibility Regulations 2000 (S.I. 2000/1970). Respondents were asked to supply evidence to support their position if a different time period was suggested.

8.4 Only a handful of responses were received on this issue suggesting that, for the sector as a whole, the proposed 20 day limit did not engender significant concerns. However, a number of replies queried what would constitute a "day" for these purposes and recommended that consideration should be given to making these "traffic days", running from 3am to 3am the following morning, in recognition of the service patterns some operators adopt. This was accepted since such operators would otherwise have their effective running time on non-exempt networks reduced by half in comparison with the rest of the industry. An appropriate definition has therefore been included in the Order.

8.5 Only three respondents directly advocated an increased number of days. A small number of respondents supported a new criterion, in addition to the maximum number of days, relating to the frequency of service operated when compared to other, fully accessible, vehicles used on the same route. We are aware that several of the larger operators of heritage and tourist networks are seeking to expand their operations to run what would be, in effect, a scheduled public transport service over non-exempt networks for a significant proportion of the year.

8.6 Whilst the Government has no desire to prevent older rail vehicles from being used in this manner, such services are clearly beyond the limited nature of the "tourist, educational or recreational purposes" envisaged by the exemption. Given legislative commitments to ensure that all (non-exempt) rail vehicles must be accessible by 1 January 2020 (see **paragraph 4.4**), it would not be acceptable for some vehicles in service on a particular route to be unregulated for the purposes of accessibility for a significant proportion of the year. Indeed, we note that some such services may be aimed specifically at commuters and/or school children travelling to and from school for whom we believe accessibility should be given greater priority. It should be remembered that

any operators who are considering running services on non-exempt networks beyond the 20 day limit could apply for a vehicle-specific exemption order instead. This process will enable the potentially greater impact on disabled people of non-compliances to be considered in the context of the type of service offered on a case-by-case basis.

8.7 The Department for Transport intends to work closely with the operators of these types of service to ensure the number of non-compliances can be minimised whilst recognising the engineering limitations of the vehicles being operated.

8.8 A number of other issues on specific aspects of the draft Order were also raised:

Regulation 3(4): Museums with no networks & newly restored vehicles

8.9 One respondent indicated that draft Article 3(4), which specifies that use on a non-exempt network is only possible if that vehicle had been used for carriage on an exempt network in the preceding 12 months, might cause some difficulties in light of how part of this sector of the industry operates. In particular, those railway museums which possess serviceable vehicles but do not themselves own or operate a heritage or tourist network (and were therefore not listed in the Order) might be precluded from operating them on non-exempt networks as might, more generally, vehicles which had come direct from restoration.

8.10 Since the Order is not vehicle-specific, the consultation draft would already have permitted older rail vehicles from museums to operate on exempt networks for an unlimited time. However, it was never the Government's policy intention to add an additional pre-condition to operation on a non-exempt network in such circumstances and we have accepted that, in these limited conditions and for the same maximum of 20 traffic days applicable to other vehicles, the Order should address this (see **paragraph 4.8**).

Operation in Depots

8.11 It had previously been considered that, since vehicles were not used "for carriage" (i.e. for passenger service) in depots, they would not require a specific exemption. However, another respondent indicated that they frequently had "depot days" in which heritage vehicles were operated for historical purposes solely within the confines of a depot on what would otherwise be a non-exempt network and requested that these should be treated in the same manner as the other "miscellaneous networks" listed in the Order.

8.12 Whilst it was considered that designation as a "miscellaneous network" would not be appropriate, since this would exempt all vehicles of any age used in depots, it was accepted that the draft Order might unintentionally prevent such depot days from happening in future. It was therefore decided, since there is no possibility of vehicles being used to provide a public transport service, that these vehicles should be treated in the same manner as those used on exempt heritage and tourist networks. Article 3 of the Order therefore ensures that heritage or tourist vehicles used for carriage in depots and introduced into service prior to 1 January 1999 are exempt and applies the same 20 traffic days limit on operation on non-exempt networks.

Narrow Gauge Issues

8.13 Although outside the scope of the Order, a number of respondents highlighted the potential problems full compliance with technical accessibility regulations might pose for new vehicles designed for use on certain narrow gauge networks where size constraints are more of a problem. An example of the types of issue that were likely to be experienced was the inability to install a compliant wheelchair space or provide the full allowance of headroom above priority seats required by RVAR..

8.14 Whilst the policy on the application of RVAR to such vehicles has been in place for over a decade, and a number of exemption orders have been required for heritage and tourist vehicles used on narrow gauge networks during this period, the Government nevertheless accepts that many of these networks experience common barriers to compliance. In light of the evidence supplied in responses, and following a meeting with affected operators in July 2009, further consideration is now being given to how these issues might best be addressed.

9. Guidance

9.1 No specific guidance will be produced for the Order since it perpetuates policy which has been in place for over a decade (guidance on compliance with RVAR is available separately as is guidance on making services more accessible to disabled people which was highlighted during the consultation exercise). However, the operators of all exempt networks listed in the Schedule to the Order will be contacted prior to coming into force to highlight the changes listed above and clarify the final provisions it contains. A summary of consultation responses has also be posted on the Department for Transport's web site.

9.2 The Order will be kept under periodic review to ensure that it remains up to date and new networks will be added as required. Officials will continue to work closely with heritage and tourist operators to ensure that their services are as accessible as possible within the engineering limits of the vehicles operated and the spirit of the provision offered.

10. Impact

10.1 An Impact Assessment has not been prepared for this Order because no additional costs on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The only small businesses to which the Order will apply are heritage and tourist railway and tramway operators and businesses that operate miscellaneous networks (see **paragraph 7.8**). It will exempt some or all of the rail vehicles used on these types of networks from the requirement to comply with the technical accessibility standards of RVA Regulations to which they would otherwise be subject.

11.2 In making the Order, the Government has recognised that it would be inappropriate to apply accessibility regulations to these rail vehicles. However, the Department for Transport will continue to work with heritage and tourist operators to

ensure their services are as accessible to disabled people as possible within the obvious constraints of the vehicles they offer.

11.3 It is noted that the operators of the networks listed in the Order will remain subject to the obligations under Part III of the DDA 1995 to take steps to ensure that their services are not impossible or unreasonably difficult for disabled people to access. The availability of guidance on what might be considered "reasonable" in these circumstances was highlighted during the consultation exercise.

12. Monitoring & Review

12.1 The Government's policy objective is to exempt rail vehicles operated on named heritage and tourist networks and on certain miscellaneous networks from the necessity of complying with rail vehicle accessibility legislation.

12.2 The Order will be kept under periodic review including an informal consultation within four years to ensure that it remains up to date and the legislation may be amended accordingly.

13. Contact

Christopher Angell at the Department of Transport (Tel: 020 7944 0082 or e-mail: christopher.angell@dft.gsi.gov.uk) can answer any queries regarding the Order.