

## **EXPLANATORY MEMORANDUM**

### **THE RAIL VEHICLE ACCESSIBILITY (SOUTH WEST TRAINS CLASS 458 VEHICLES) EXEMPTION (AMENDMENT) ORDER 2004 No.2149**

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

#### **2. Description**

2.1 This Order amends S.I. 2002/656, as amended by S.I. 2002/1762, which exempts certain specified rail vehicles, used by South West Trains Limited, from certain requirements of the Rail Vehicle Accessibility Regulations 1998 (S.I. 1998/2456, amended by S.I. 2000/3215). The effect of this amendment Order is to extend the expiry date of an existing exemption, and amend the terms under which the authorisation for the use of the vehicles will cease.

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

3.1 None.

#### **4. Legislative Background**

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

4.2 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.

4.3 The application for this amendment to the exemption Order has been made because the vehicles still do not comply with one of the requirements of the Regulations, and their exemption from this requirement is shortly to expire. The requirement is that the height of the letters on internal visual display systems must be at least 35mm. The height of the letters on the system in question is only 32mm. The reason for the original non-compliance was that the vehicles were designed before the RVAR were fully developed and they did not at that time cater for this particular item. It was too late to make the necessary alterations prior to service entry and a 5 year period of exemption was granted until September 2004, by which time a replacement system would be available. However, even though the technology for South West Trains to comply is now available, the applicant claims that to replace the systems would not be cost effective, although no evidence has been provided to support this.

South West Trains say, in mitigation, that the display characters offer a very good colour contrast and that audible announcements are made either automatically or by a guard. The effect that granting an extension to the Order for a limited period is likely to be minimal. It should be noted that these trains bring enhanced accessibility standards over the slam door rolling stock they replaced, and the amendment that this Order makes to the conditions of the authorisation will provide an opportunity to review all the exemptions before the trains are passed to a new operator.

## **5. Extent**

5.1 This instrument applies to Great Britain.

## **6. Policy background**

6.1 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 passenger information systems were installed in the vehicles prior to service entry and South West Trains were granted a 5 year exemption on this basis. To fit compliant systems retrospectively at this stage would be very costly as SWT's lease for the trains expires in February 2005 and may only be extended for a few months. We have requested financial information from the leasing company to determine the true additional costs over the remaining lifetime of the vehicles but this not been forthcoming within the required time-scale. On this basis, and because evidence from the use of the vehicles shows that the potential impact on disabled users of the vehicles is negligible, the Secretary of State has decided to grant the application for a further period of exemption.

6.2 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. The 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. The DPTAC has been consulted on this application, and supplied comments, a copy of which are attached to this Memorandum. The DPTAC only recommended a 2 year exemption, as opposed to the 15 years requested by the train operating company. We are in agreement with this but, as we understand that the lease-holder of the vehicles is going to change within the next 2 years, and we do not know who the new lease-holder will be, the Order has been amended to provide that the exemptions will cease if there is a change of operator. This will apply to all the existing exemptions that these vehicles have and the new operator will either have to ensure that the vehicles are compliant, or reapply for the exemptions. The DPTAC also recommended that South West Trains staff be required to undertake disability awareness training, monitor the effectiveness of the units and report any complaints to the DfT. However, as this is an amendment Order that will extend the period of exemption for only a short period of time, we do not feel it is necessary to add these further conditions at this stage. We have also consulted Her Majesty's Railway Inspectorate (HMRI), the

Strategic Rail Authority and the Office of Rail Regulation. Having taken the comments made by the consultees into account, the Secretary of State has decided to grant the exemption for the period shown in the Order.

## **7. Impact**

7.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

7.2 The impact on the public sector is negligible.

## **8. Contact**

Peter Colmans at the Department for Transport, Tel: 020 7944 4916 or e-mail [Peter.colmans@dft.gsi.gov.uk](mailto:Peter.colmans@dft.gsi.gov.uk), can answer any queries regarding the instrument.

## **RVAR Exemption Extension Application**

### **South West Trains Ltd**

Class 458

### **Current Exemption**

Statutory Instrument 2001 No. 848

### **Considered July 2004**

### **Regulation Clause Number**

13(7)

### **Regulation**

13(7) The first letter of, and numbers used in, announcements on visual systems shall be not less than 70 millimetres high on systems on the front of the vehicle and not less than 35 millimetres high on other systems, and all letters and numbers shall contrast with their background.

### **Period Sought**

2015 (predicted half life internal refurbishment)

### **DPTAC Recommendation**

DPTAC were disappointed to receive this extension application from South West Trains, as it was our understanding that the relevant Passenger Information Systems would be replaced with RVAR compliant units before the current exemption expires in September 2004.

When considering this application, DPTAC were reluctant to recommend the granting of this extension given that the technology needed to comply is available, and South West Trains have had ample time to replace all the existing units.

However, DPTAC were also aware that South West Trains will be returning the vehicles listed in this application to the leasing agent within the next 2 years.

On these grounds only, DPTAC recommend the granting of this extension for a further period of 2 years, subject to the following conditions:

- All on-train staff undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- The effectiveness of these units should be monitored and
- Any complaints relating to these issues should be reported to the MIU.

If granted DPTAC recommend that this exemption should only remain valid for Class 458 vehicles, as specified in the application when operated by South West Ltd on this service.

It should be noted that DPTAC would not expect to receive another exemption relating to this PIS in respect of these vehicles, once they have left South West Trains service.

## **RVAR Exemption Extension Application**

### **South West Trains Ltd**

Class 458

### **Current Exemption**

Statutory Instrument 2001 No. 848

### **Considered July 2004**

### **Regulation Clause Number**

13(7)

### **Regulation**

13(7) The first letter of, and numbers used in, announcements on visual systems shall be not less than 70 millimetres high on systems on the front of the vehicle and not less than 35 millimetres high on other systems, and all letters and numbers shall contrast with their background.

### **Period Sought**

2015 (predicted half life internal refurbishment)

### **DPTAC Recommendation**

DPTAC were disappointed to receive this extension application from South West Trains, as it was our understanding that the relevant Passenger Information Systems would be replaced with RVAR compliant units before the current exemption expires in September 2004.

When considering this application, DPTAC were reluctant to recommend the granting of this extension given that the technology needed to comply is available, and South West Trains have had ample time to replace all the existing units.

However, DPTAC were also aware that South West Trains will be returning the vehicles listed in this application to the leasing agent within the next 2 years.

On these grounds only, DPTAC recommend the granting of this extension for a further period of 2 years, subject to the following conditions:

- All on-train staff undertake disability awareness training in order to identify and be able to provide appropriate assistance if required.
- The effectiveness of these units should be monitored and
- Any complaints relating to these issues should be reported to the MIU.

If granted DPTAC recommend that this exemption should only remain valid for Class 458 vehicles, as specified in the application when operated by South West Ltd on this service.

It should be noted that DPTAC would not expect to receive another exemption relating to this PIS in respect of these vehicles, once they have left South West Trains service.

Peter Colmans  
DfT Mobility and Inclusion Unit  
1/18 Great Minster House  
76 Marsham Street  
London  
SW1P 4DR

Ffion Grant  
Secretariat  
Disabled Persons Transport Advisory  
Committee

1/14 Great Minster House  
76 Marsham Street  
London  
SW1P 4DR

Direct line: 020 7944 8013  
Fax: 020 7944 6998  
Minicom: 020 7944 3277  
GTN Code: 3533

E-mail: [ffion.grant@dft.gov.uk](mailto:ffion.grant@dft.gov.uk)  
Website: [www.dptac.gov.uk](http://www.dptac.gov.uk)

Dear Peter

**Disability Discrimination Act 1995**  
**Rail Vehicle Accessibility Regulations 1998**  
**Application for Extension of Exemption by South West**  
**Trains Ltd**

05 July 2004

Thank you for seeking DPTAC's advice on these extension applications for of exemption under Section 47(3) of the Disability Discrimination Act 1995.

South West Trains Express were seeking extension to the current exemption from clause 13(7) in regards to their Class 458 vehicles, as set out in Statutory Instrument 2001 No. 848.

In making our recommendations, DPTAC have considered the applications in terms of their implications and effect on disabled passengers.

We have not necessarily taken any financial, technical or operational issues into account. We accept that the Mobility and Inclusion Unit of DfT, after consultation with other relevant bodies, will include these wider considerations when making their recommendation to the Secretary of State.

DPTAC's views are set out in the attached papers as follows:  
Annex A - Class : Clause 13(7)

Yours sincerely

**Ffion Grant**  
**DPTAC Secretariat**